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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 226

THOMAS A. EARLY, RECEIVER OF THE FARMERS & MERCHANTS NATIONAL BANK OF LAKE CITY, PETITIONER,

vs.

FEDERAL RESERVE BANK OF RICHMOND

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 8, 1929

CERTIORARI GRANTED OCTOBER 21, 1929

(34,357)

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TRANSCRIPT OF RECORD

CAPTION

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.
AT LAW.

At a District Court of the United States for the Eastern District of South Carolina, begun and held at the Court House in the City of Florence, S. C., on the fourth Monday of April, being the twenty-third day of the same month, in the year of our Lord one thousand nine hundred and twenty-eight, and on May 1st, 1928, adjourned to Charleston, S. C.

Present: The Honorable Ernest F. Cochran, United States District Judge for the Eastern District of South Carolina.

Among other were the following proceedings:

COMPLAINT

(2) Filed November 9, 1927.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.
AT LAW.

Thos. A. Early, as Receiver of The Farmers and Merchants National Bank of Lake City, S. C., a national banking association, Plaintiff,

vs.

The Federal Reserve Bank of Richmond, a banking corporation duly organized under the Federal Reserve Act, Defendant.

The plaintiff above named, complaining of the defendant herein, alleges:

1. That the plaintiff, Thos. A. Early, was on October 18, 1926, duly appointed Receiver of the Farmers and Merchants National Bank of Lake City, South Carolina, by the Comptroller of the Currency; that he qualified as Receiver and has ever since been and now is serving and acting as such Receiver. That said Farmers and Merchants National Bank of Lake City, South Carolina, is a national banking association and, prior to its closing and suspension as hereinafter set forth, was a member of the Federal Reserve System of banking provided for by the Act of Congress of December 23, 1913, and acts amendatory thereof, and as such member owned 78 shares of stock in the Federal Reserve Bank of Richmond, and was engaged in business and had its office at Lake City, South Carolina, in the Eastern District of South Carolina.

2. That the defendant, the Federal Reserve Bank of Richmond, is a banking corporation, duly organized under said Federal Reserve System, with a district or territory assigned to it which includes the State of South Carolina.

(3) FIRST CAUSE OF ACTION

For the first cause of action against defendant, plaintiff alleges:

1. That, following the close of business on Saturday, October 9, 1926, the said Farmers and Merchants National Bank of Lake City, South Carolina, was, on the evening of said day, closed on account of insolvency by resolution of its Board of Directors. That said insolvent bank, at the time of said suspension and closing, had on deposit with the defendant, the Federal Reserve Bank of Richmond, in its reserve account, subject to check, the sum of Twenty two Thousand Eighty-eight Dollars and Forty-eight cents ($22,088.48). That notice of said suspension and closing was duly sent to and received by said defendant.

2. That plaintiff, as Receiver of said insolvent bank, on, to wit, the 19th day of February, 1927 made demand upon defendant the Federal Reserve Bank of Richmond,

for the sum of $7,187.86, constituting part of said reserve deposit balance of Twenty Two Thousand Eighty-eight Dollars and Forty-eight cents ($22,088.48), and on 11th day of May, 1927, demanded payment of the sum of $14,900 62 constituting the residue of said reserve deposit balance, but defendant has failed and refused to pay the plaintiff said sums or any part thereof, and there is now due and owing by the defendant to the plaintiff the sum of Twenty Two Thousand Eighty-eight Dollars and Forty-eight cents ($22,088.48), together with interest upon the sum of $7,187.86 at the rate of six per cent per annum from the 19th day of February, 1927, and interest upon the sum of $14,900.62 from the 11th day of May, 1927, at the rate of six per cent per annum, exclusive of all set offs and just grounds of defense.

SECOND CAUSE OF ACTION

For the second cause of action against the defendant, the plaintiff alleges:

1. That prior to the said closing and suspension of said Farmers and Merchants National Bank of Lake City, South Carolina, set forth in the aforesaid first cause of action, said Farmers and Merchants National Bank of Lake City, South Carolina, had duly subscribed for and (4) had been allotted 78 shares of the stock of the said Federal Reserve Bank of Richmond, and had paid on said subscription the sum of Thirty Nine Hundred Dollars ($3900). That after said closing and suspension of said Farmers and Merchants National Bank of Lake City, South Carolina, plaintiff, as Receiver of said Farmers and Merchants National Bank, surrendered said 78 shares of stock to the defendant, the Federal Reserve Bank of Richmond, in accordance with the provisions of the aforesaid Act of Congress of December 23, 1913, and acts amendatory thereof, and on, to wit, the 20th day of May, 1927, demanded of said defendant the sum of Thirty Nine Hundred Dollars ($3900), constituting the surrender value of said stock, and also demanded the sum of $215 15/100 representing accrued dividends upon said surrendered stock, but defendant has failed and refused to pay the same to the plaintiff or any part thereof, and there is now due and owing by the defendant to the plain-

tiff the said sum of Thirty Nine Hundred Dollars ($3900), and said sum of $215 15/100, representing accrued dividends, with interest upon the aggregate amount thereof at the rate of six per cent per annum from the 20th day of May, 1927, exclusive of all set offs and just grounds of defense.

Wherefore, plaintiff prays judgment against the defendant, the Federal Reserve Bank of Richmond:

1. ON THE FIRST CAUSE OF ACTION:

For the sum of Twenty Two Thousand Eighty-eight Dollars and Forty-eight cents ($22,088.48), together with interest upon the sum of $7,187.86, at the rate of six per cent per annum from the 19th day of February, 1927, and interest upon the sum of $14,900.62, at the rate of six per cent per annum from the 11th day of May, 1927.

2. ON THE SECOND CAUSE OF ACTION:

For $4115 15/100, together with interest thereon at the rate of six per cent per annum from the 20th day of May, 1927.

R. E. WHITING,

_____,

Attorneys for Plaintiff.

ANSWER AND COUNTERCLAIM

(5) Filed Feby. 15, 1928.

The defendant, Federal Reserve Bank of Richmond, answering the complaint of the plaintiff, herein says:

1. Defendant, Federal Reserve Bank of Richmond, admits the allegations of the first paragraph of the complaint.

2. Defendant, Federal Reserve Bank of Richmond, admits the allegations of the second paragraph of the complaint.

ANSWER TO FIRST CAUSE OF ACTION

Defendant, Federal Reserve Bank of Richmond, answering the allegations set out as the plaintiff's first cause of action says:

Defendant, Federal Reserve Bank of Richmond, admits all matters and things alleged as the first cause of action except that the Federal Reserve Bank of Richmond denies that the Farmers and Merchants National Bank of Lake City, S. C., had on deposit with the Federal Reserve Bank of Richmond at the time of the closing of the Farmers and Merchants National Bank of Lake City, S. C., the sum of twenty-two thousand eighty-eight dollars and forty-eight cents ($22,088.48), and says that the said balance was subject to certain counter claims and demands of the Federal Reserve Bank of Richmond, which are more fully described in the affirmative defense and counter claim which is hereafter set forth, and the Federal Reserve Bank of Richmond denies that it is indebted to the plaintiff in any sum whatsoever.

ANSWER TO SECOND CAUSE OF ACTION

Defendant, Federal Reserve Bank of Richmond, (6) answering the allegations set forth in the plaintiff's second cause of action, says:

Defendant, Federal Reserve Bank of Richmond, admits all matters and things alleged as the second cause of action, except that the Federal Reserve Bank of Richmond denies that it is indebted to the plaintiff in the sum of thirty-nine hundred dollars ($3,900.00) and two hundred fifteen dollars and fifteen cents ($215.15), as in the complaint alleged, or in any other sum whatsoever; and the Federal Reserve Bank of Richmond says that the surrender value of the stock described in the complaint and the dividends thereon are under the terms of the Federal Reserve Act and other acts of Congress amendatory thereof properly applicable to the counter claims and demands set forth in the affirmative defense and counter claim hereafter:

AFFIRMATIVE DEFENSE AND COUNTER CLAIM

Further answering the complaint of the plaintiff and by way of affirmative defense and statement of counter claim, the defendant, Federal Reserve Bank of Richmond, says:

1. On October 7, 1926, the Federal Reserve Bank of Richmond sent to the Farmers and Merchants National Bank of Lake City, S. C., for collection and payment checks drawn upon that bank by depositors thereof amounting to fourteen thousand nine hundred thirty-four dollars and twelve cents ($14,934.12), which checks had been received by the Federal Reserve Bank of Richmond on deposit or for collection from member banks, as provided in the Federal Reserve Act.

2. On October 8, 1926, the Farmers and Merchants National Bank of Lake City, S. C., acknowledged receipt of said checks, and accepted, cancelled, and charged to the account of the drawers thereof certain of said checks amounting to fourteen thousand nine hundred dollars and sixty-two cents ($14,900.62), and refused to pay and returned to the Federal Reserve Bank of Richmond certain of said checks amounting to thirty-three dollars and fifty cents ($33.50).

3. On October 8, 1926, the Federal Reserve Bank of
(7) Richmond sent to the Farmers and Merchants National Bank of Lake City, S. C., for collection and payment checks drawn upon that bank by depositors thereof amounting to twenty-one thousand forty-one dollars and two cents ($21,041.02), which checks the Federal Reserve Bank of Richmond had received on deposit or for collection, as provided in the Federal Reserve Act.

4. On October 9, 1926, the Farmers and Merchants National Bank of Lake City, S. C., acknowledged receipt of said checks and accepted, cancelled, and charged to the account of the drawers thereof certain of said checks amounting to twenty thousand one hundred seventy dollars and seventy-one cents ($20,170.71), and refused to pay and returned unpaid certain of said checks amount-

ing to eight hundred seventy dollars and thirty-one cents ($870.31).

5. The Federal Reserve Bank of Richmond and the Farmers and Merchants National Bank of Lake City, S. C., had agreed prior to the time above mentioned that the amount of checks thus sent to the Farmers and Merchants National Bank of Lake City, S. C., might be charged against the reserve account kept by the Farmers and Merchants National Bank of Lake City, S. C. with the Federal Reserve Bank of Richmond, at any time, and that such checks as were refused payment and returned unpaid should be credited to the Farmers and Merchants National Bank of Lake City, S. C., when duly returned.

6. For sometime prior to the dates above mentioned it had been the practice of the Federal Reserve Bank of Richmond to allow a period of three business days to elapse before charging to the account of the Farmers and Merchants National Bank of Lake City, S. C., the amount of the checks sent to it for collection and payment, as above mentioned, in order to allow the Farmers and Merchants National Bank of Lake City, S. C., an opportunity to examine such checks and to determine whether or not it would accept and pay the same or would return them as unpaid.

7. On October 11, 1926, the Federal Reserve Bank of Richmond charged to the account of the Farmers and Merchants National Bank of Lake City, S. C., the amount (8) of all checks sent to it on October 7th and thereafter credited the Farmers and Merchants National Bank of Lake City, S. C., with the amount of checks returned unpaid.

8. On October 11, 1926, the Farmers and Merchants National Bank of Lake City, S. C., had to its credit in its reserve account with the Federal Reserve Bank of Richmond the sum of twenty-two thousand eighty-eight dollars and forty-eight cents ($22,088.48), against which was chargeable, as above set out, the amount of all checks sent to the Farmers and Merchants National Bank of Lake City, S. C., upon October 7, 1926, and October 8, 1926.

9. On October 11, 1926, the Federal Reserve Bank of Richmond charged to such reserve account of the Farmers and Merchants National Bank of Lake City, S. C., the amount of checks sent to the Farmers and Merchants National Bank of Lake City, S. C., on October 7th, and credited to such account the amount of the checks sent upon that day and returned unpaid. The balance of said reserve account remaining after the charges and credits above mentioned was seven thousand one hundred eighty-seven dollars and eighty six cents ($7,187.86).

10. This balance the Federal Reserve Bank of Richmond retained and is now retaining as a credit and a part payment upon the amount due by the Farmers and Merchants National Bank of Lake City, S. C., in payment for checks sent to it by the Federal Reserve Bank of Richmond on October 8, 1926, and accepted and cancelled by the Farmers and Merchants National Bank of Lake City, S. C., on October 9, 1926.

11. After allowing a credit to the Farmers and Merchants National Bank of Lake City, S. C., for the sum of seven thousand one hundred eighty-seven dollars and eighty-six cents ($7,187.86), there remained due on account of checks sent to the Farmers and Merchants National Bank of Lake City, S. C., on October 8th the sum of twelve thousand nine hundred eighty-two dollars and eighty-five cents ($12,982.85), which said sum was never paid by the Farmers and Merchants National Bank of Lake City, S. C., to the Federal Reserve Bank of Richmond.

12. The Federal Reserve Bank of Richmond filed with Thos. A. Early, Receiver of the Farmers and Merchants
(9) National Bank of Lake City, S. C., a claim for the above mentioned sum of twelve thousand nine hundred eighty-two dollars and eighty-five cents ($12,982.85), which claim the said Thos. A. Early, Receiver of the Farmers and Merchants National Bank of Lake City, S. C., refused to pay.

Wherefore, the Federal Reserve Bank of Richmond prays that its claim for twelve thousand nine hundred eighty-two dollars and eighty-five cents ($12,982.85) with

interest from October 12, 1926, subject to a credit of four thousand one hundred fifteen dollars and fifteen cents ($4,115.15), as of May 20, 1927, on account of the stock and accrued dividends thereon mentioned in the plaintiff's second cause of action may be established against Thos. A. Early, Receiver of the Farmers and Merchants National Bank of Lake City, S. C., plaintiff herein, and that the defendant Federal Reserve Bank of Richmond, may have judgment against the said Thos. A. Early, Receiver of the Farmers and Merchants National Bank of Lake City, S. C., payable out of the assets of the Farmers and Merchants National Bank of Lake City, S. C., in his hands as Receiver.

M. G. WALLACE,
Attorney for Federal Reserve
Bank of Richmond.

State of Virginia,
City of Richmond, to-wit:

George J. Seay, being duly sworn, deposes and says that the matters and things alleged in the above answer are of his own knowledge true, and that he makes this verification because the defendant, Federal Reserve Bank of Richmond, is a corporation, and he is an officer thereof, to-wit: its Governor.

GEORGE J. SEAY.

Subscribed and sworn to before me this 23rd day of November, 1927.

M. G. CRAWFORD,
(Seal) Notary Public.

My Commission expires June 5th, 1929.

REPLY

(10) Filed March 14, 1928.

The Plaintiff, replying to the affirmative defense and counter claim set up in defendant's answer, alleges:

1. The items mentioned in paragraphs number 1 and number 3 of the affirmative defense and counter claim were received by the Federal Reserve Bank of Richmond for deferred credit, and had not become available for withdrawal or other use by the sending banks at the time of the suspension and closing of the Farmers and Merchants National Bank, Lake City, S. C.

2. In receiving and handling such checks for collection, the Federal Reserve Bank of Richmond did not become the owner of the paper, but acted only as agent of the banks from which it received the checks.

3. The Federal Reserve Bank of Richmond was notified of the suspension and closing of the Farmers and Merchants National Bank of Lake City, S. C., before the charge was made on October 11th, 1926 against the reserve account of such insolvent bank.

4. Upon notice of the suspension and closing of the Farmers & Merchants National Bank of Lake City, S. C., the authority of the Federal Reserve Bank under the agreement set out in paragraph number 5 was revoked; and thereafter no right existed on the part of the Federal Reserve Bank of Richmond to charge the reserve account of the Farmers and Merchants National Bank with any outstanding collection items.

5. The claim of the Federal Reserve Bank of Rich-
(11) mond in respect to such outstanding collection items does not exist in its own right, but only as trustee for various of its depositors; and such claim is not a proper subject of counter claim to the action brought by plaintiff.

R. E. WHITING,
Attorney for Plaintiff.

STIPULATION WAIVING A TRIAL BY JURY

(12) Filed March 14, 1928.

It is hereby agreed that a jury shall be waived; and that all issues in the above entitled cause shall be sub-

mitted to the Court for trial and determination; this submission to be made upon the stipulation and agreed statement of facts which shall be attached hereto.

R. E. WHITING,
Attorney for Plaintiff.

M. G. WALLACE,
Attorney for Defendant.

November 23rd, 1927.

ORDER OF JUDGMENT

(13) Filed May 9, 1928.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.
AT LAW.

Thos. A. Early, as Receiver of the Farmers and Merchants National Bank of Lake City, S. C., a national banking association, Plaintiff,

vs.

Order of Judgment

The Federal Reserve Bank of Richmond, a banking corporation duly organized under the Federal Reserve Act, Defendant.

This action was tried under an agreement waiving jury, upon a stipulation of facts. Certain exhibits are attached to, or referred to, in the stipulation. The matters set forth in paragraphs one to sixteen in the stipulation and agreed statement of facts are found to be true and are hereby adopted as the special findings of the court and made a part of this judgment.

Two causes of action are set out in the complaint:

(1) For the recovery of the deposit account of $22,088.48 standing on the books of the Federal Reserve Bank of Richmond when the Farmers and Merchants National Bank of Lake City closed its doors;

(2) For the surrender value of 78 shares of stock in the Reserve Bank, amounting, on May 20, 1927, to $4115.15.

The Reserve Bank, "as trustee for various of its depositors", has filed a claim against the insolvent bank for $12,982.85. The amount of this claim is made a counter-claim in the answer of defendant.

From the examination of pertinent authorities submitted to me, and considering the facts and circumstances appearing in the stipulation of facts, together with the statutes, regulations and circulars governing the banking and clearing house operations of the Reserve Bank, I find that when the Farmers and Merchants National Bank of Lake City closed its doors on October 9th, 1926, the said bank then had a credit on the books of the Reserve Bank, after making all proper allowances and de-
(14) ductions, in the amount of $22,088.48. The charges made on account of the outstanding cash letters against the insolvent bank, I do not regard as proper allowances or deductions. The right of the Reserve Bank to make the charges terminated with the insolvency of the member bank. Demand for $7187.86 was made on the Reserve Bank by the Receiver on February 19th, 1927. Demand for $14,900.62 was made on May 11, 1927. These demands were refused. Interest therefore becomes calculable at the legal rate prevailing in Virginia,—6% per annum,—on $7187.86 from February 19, 1927 and on $14,900.62 from May 11, 1927. The surrender value of the stock in the Reserve Bank as of date May 20th, 1927, was $4115.15.

The counter-claim of defendant is based on items in transit that were being handled by the Reserve Bank for collection. They were received for deferred credit, under regulations and check collection circulars which provide that the Reserve Bank will act only as agent for the bank from which it receives such checks. The items cannot be regarded as the property of the Reserve Bank. The circumstances shown in respect to the counter-claim make it clearly apparent that the claims upon which the suit is brought, and the claim set out by defendant in its counter-claim, do not arise between the parties in the

same capacity. The Reserve Bank has the right to file a general claim, as agent of the owners of the collection items in such amount as it may be advised; and it will be entitled, as such agent, to dividends on the claim established, in the same manner as dividends may be paid by the receiver on other claims filed against the insolvent bank.

It is therefore

ORDERED AND ADJUDGED, That defendant's counter-claim be dismissed, and that plaintiff have judgment against and do recover from the defendant: (1) On the first cause of action; The sum of $22,088.48, with interest $1417.38, aggregating in amount $23,505.86; (2) (15) On the second cause of action; The sum of $4115.15, with interest $239.34, aggregating in amount $4354.49.

ERNEST F. COCHRAN,
U. S. District Judge.

Charleston, S. C.
May 9th, 1928.

JUDGMENT

(16) Filed May 9, 1928.

UNITED STATES OF AMERICA,
Eastern District of South Carolina.
In the District Court.

Thos. A. Early, as Receiver of the Farmers and Merchants National Bank of Lake City, S. C., a national banking association, Plaintiff.

against

The Federal Reserve Bank of Richmond, a banking corporation duly organized under the Federal Reserve Act, Defendant.

This action having been brought to a trial at a District Court held on the Ninth day of May, A. D. 1928, and an Order of Judgment for the Plaintiff having been rendered therein by the Court, for the sum of Twenty-seven thousand eight hundred and sixty and 35/100 ($27,860.-35) dollars, and the costs having been adjudged at thirty-five and no/100 ($35.00) dollars;

Now, on motion of R. E. Whiting, Esq., Attorney for said Plaintiff;

IT IS ADJUDGED, that plaintiff, Thos. A. Early, Receiver as aforesaid, recover of said defendant, The Federal Reserve Bank of Richmond, Twenty-seven thousand eight hundred and sixty and 35/100 ($27,860.35) dollars, so found, with thirty-five and no/100 ($35.00) dollars costs.

R. E. WHITING,
Plaintiff's Attorney.

RICHARD W. HUTSON,
C. D. C. U. S. E. Dist. S. C.

(Seal)

May 9, 1928.

BILL OF EXCEPTIONS

(17) Filed May 9, 1928.

BILL OF EXCEPTIONS NO. 1

Be it remembered that at the trial of this action, a jury having been waived by a written stipulation filed with the Clerk of this court, and all issues submitted to the court for trial and determination, upon the stipulation and agreed statement of facts filed with such stipulation, the plaintiff and defendant to maintain the issues made by their pleading offered in evidence the above mentioned stipulation and agreed statement of facts and the exhibits attached thereto, which stipulation and agreed statement of facts was as follows, to-wit:

"Come now counsel for plaintiff and counsel for defendant and agree upon the facts hereinafter set forth, and stipulate that the same may be filed and considered as evidence in this cause:

STATEMENT OF FACTS

1. The Federal Reserve Bank of Richmond is and was at all times hereinafter mentioned a banking corporation, duly organized under the Federal Reserve Act, having its chief office in Richmond, Virginia, and the district, or territory, assigned to it included the State of South Carolina.

2. The Farmers and Merchants National Bank of Lake City was at all times herein mentioned a National banking association duly organized under the National Bank Act, and was a member of the Federal Reserve System, and had its office in Lake City, South Carolina, until it was closed and placed in liquidation as stated herein.

3. The Federal Reserve Bank of Richmond had for sometime prior to the closing of the Farmers and Merchants National Bank of Lake City received from banks which were members of the Federal Reserve System and other Federal Reserve Banks checks drawn upon the Farmers and Merchants National Bank of Lake City. All of the said checks were received in accordance with, and subject to the terms of Regulation J, series of 1924, (18) duly made and promulgated by the Federal Reserve Board a copy of which is hereto attached, marked Exhibit 1, and made a part hereof, and with circular No. 143 issued by the Federal Reserve Bank of Richmond, a copy of which is hereto attached marked Exhibit 2, and made a part hereof and with the time schedule issued by the Federal Reserve Bank of Richmond, marked Exhibit 3, a copy of which is hereto attached and made a part hereof.

4. A copy of the said circular No. 143 had been sent to the Farmers and Merchants National Bank of Lake City, and receipt thereof had been acknowledged by the Farmers and Merchants National Bank of Lake City be-

fore the times hereinafter mentioned, a copy of which acknowledgment is hereto attached Marked Exhibit 4, and made a part hereof.

5. In accordance with said Regulation J and said Circular No. 143 it had been the practice of the Federal Reserve Bank of Richmond to send on each business day to the Farmers and Merchants National Bank of Lake City checks drawn upon it, which had been received by the Federal Reserve Bank of Richmond as above stated, and when three business days had elapsed after the dispatch of a letter containing such checks to charge the amount thereof to the reserve account maintained by the Farmers and Merchants National Bank of Lake City with the Federal Reserve Bank of Richmond. If the Farmers and Merchants National Bank of Lake City was willing to accept and pay such checks it retained them and charged them to the accounts of the drawers. If it was unwilling to pay any or all of such checks, it returned such of them as it was unwilling to pay after causing them to be duly protested, if protest was requested, and the amount of all checks so returned was credited to the account of the Farmers and Merchants National Bank of Lake City.

6. In the course of conducting business as stated above, the Federal Reserve Bank of Richmond did not disclose to the Farmers and Merchants National Bank of Lake City the names of persons from whom the checks had been received except insofar as this knowledge could be obtained from endorsements appearing upon the (19) checks. When such checks were sent to the Farmers and Merchants National Bank of Lake City, a memorandum account of the amount thereof was kept by the Federal Reserve Bank of Richmond, and when the said three business days had elapsed the amount of all such checks was charged by the Federal Reserve Bank of Richmond on its books to the reserve account of the Farmers and Merchants National Bank of Lake City. When such checks were received by said Farmers and Merchants National Bank, a memorandum account thereof was kept by said bank, and when three business days from the date of the letter of transmission had elapsed, the amount of such checks as had been charged to the

accounts of the drawers of same in said Bank were credited to the said Federal Reserve Bank on the books of said Farmers and Merchants National Bank in the reserve account it carried with the said Federal Reserve Bank.

7. On Thursday, October 7, 1926, the Federal Reserve Bank of Richmond sent to the Farmers and Merchants National Bank of Lake City subject to the provisions of said Regulation J and Circular No. 143 a letter containing checks which had been received by it subject to the provisions of said Regulation J and Circular No. 143, said checks being drawn upon the said Farmers and Merchants National Bank amounting to $14,934.12. A copy of said letter of October 7, 1926, is hereto attached, marked Exhibit 5 and made a part hereof. The said letter and checks were received by the Farmers and Merchants National Bank of Lake City on October 8, 1926, and the usual slip or receipt attached to such letter was mailed by the Farmers and Merchants National Bank of Lake City to the Federal Reserve Bank of Richmond on October 8, 1926, and the usual slip or receipt attached to such letter was mailed by the Farmers and Merchants National Bank of Lake City to the Federal Reserve Bank of Richmond on October 8th. A copy of said slip, or receipt, is hereto attached, marked Exhibit 6 and made a part hereof. On October 8, 1926, the Farmers and Merchants National Bank cancelled checks contained in the said letter amounting to Fourteen Thousand Nine Hundred Dollars and Sixty-two Cents ($14,900.62), and charged them to the accounts of the drawers and returned unpaid checks amounting to Thirty-three Dollars (20) and Fifty Cents ($33.50). After the close of business on October 9, 1926, said Farmers and Merchants National Bank suspended, and notice of said suspension was received by said Federal Reserve Bank on October 10th as more fully hereinafter set forth in paragraph 12 hereof. On October 11, 1926 the Federal Reserve Bank of Richmond charged the reserve account of the Farmers and Merchants National Bank of Lake City with the amount of all checks contained in the above mentioned letter of October 7th, and thereupon on that day credited the amount of such checks to the banks from which they had been received in accordance with the provisions of

Regulation J and Circular No. 143. The checks, totalling Thirty-three Dollars and Fifty Cents ($33.50), which had been sent in the said letter were returned unpaid to the Federal Reserve Bank of Richmond, and the amount of such checks was credited to the Farmers and Merchants National Bank of Lake City and charged to the banks from which they had been received.

8. At the opening of business on October 11th the Federal Reserve Bank of Richmond had to the credit of the Farmers and Merchants National Bank of Lake City in its reserve account the sum of Twenty-two Thousand and Eighty-five Dollars and Fifty-two Cents ($22,085.52), and after the said Federal Reserve Bank had made bookkeeping entries charging the amount of the letter of October 7th and crediting the amount of certain checks, which were returned unpaid, at the close of business on October 11th there appeared on the books of said Federal Reserve Bank in the reserve account of the Farmers and Merchants National Bank of Seven Thousand Two Hundred and Thirty-five Dollars and Six Cents ($7,235.06).

9. On Friday, the 8th day of October 1926, the Federal Reserve Bank of Richmond sent to the Farmers and Merchants National Bank of Lake City, subject to the provisions of Regulation J and Circular No. 143 a letter containing checks which had been received by the Federal Reserve Bank subject to the provisions of Regulation J and Circular No. 143 amounting to Twenty-one Thousand and Forty-one Dollars and Two Cents ($21,041.02), (21) a copy of which letter is hereto attached, marked Exhibit 7 and made a part hereof. This letter was received by the Farmers and Merchants National Bank of Lake City on the 9th day of October 1926, and upon that day the Farmers and Merchants National Bank of Lake City mailed to the Federal Reserve Bank of Richmond the usual slip, or receipt a copy of which is hereto attached, marked Exhibit 8 and made a part hereof, and on the 9th day of October, 1926, checks contained in the said letter amounting to Twenty Thousand, One Hundred and Seventy Dollars and Seventy-one Cents ($20,170.71) were cancelled and charged to the accounts of the drawers thereof by the Farmers and Merchants National Bank, and checks amounting to Eight Hundred and

Seventy Dollars and Thirty-one Cents ($870.31) were returned unpaid to the Federal Reserve Bank of Richmond.

10. On Tuesday the 12th day of October, 1926 the said Federal Reserve Bank charged the amount of the checks contained in the letter of October 8th to the reserve account of the Farmers and Merchants National Bank, but having on October 11th charged the letter of October 7th to the said reserve account of said Farmers and Merchant National Bank, the balance appearing in said reserve account by reason of said charge was Seven Thousand Two Hundred and Thirty-five Dollars and Six Cents ($7,235.06) and was insufficient to care for said checks of said letter of October 8th, and said reserve bank charged the various items included in the letter of October 8th to the banks from which they had been received and on the same day the charge against the account of the said Farmers and Merchants National Bank was reversed; thereupon the said Reserve bank advised said banks against which said items had been charged back that actual and final payment for such checks had not been received from the Farmers and Merchants National Bank of Lake City and later the Federal Reserve Bank of Richmond notified such banks to which such checks had been charged that it was holding the sum of Seven Thousand One Hundred and Eighty-seven Dollars and Eighty-six Cents ($7.187.86), which appeared to the credit of the Farmers and Merchants National Bank of Lake City in its reserve account, and that it would distribute the said sum as a part payment on account of the checks con-
(22) tained in the letter of October 8th if it appeared that such sum was applicable as a part payment on account of the checks contained in the letter of October 8th mentioned above. This amount was carried by said reserve bank in the reserve account of the Farmers and Merchants National Bank of Lake City until October 21st, 1926, at which time it was transferred to a special or suspense account, by said reserve bank, and the said sum is still held by the reserve bank pending the determination of this cause.

11. The difference between the said sums of $7235.06 and $7,187.86 mentioned in the preceding paragraph is due to certain entries made in the reserve account of the

Farmers and Merchants National Bank of Lake City denoting charges and credits concerning matters not involved in this controversy. A copy of the ledger of the said Federal Reserve Bank of Richmond showing said reserve account is hereto attached, marked Exhibit 9, and made a part hereof.

12. On Saturday, October 9, 1926, after the close of business the directors of the Farmers and Merchants National Bank of Lake City by formal action passed a resolution closing said bank on account of insolvency, and on Sunday, October 10th, Mr. P. H. Arrowsmith, Attorney for the Farmers and Merchants National Bank of Lake City sent to the Federal Reserve Bank of Richmond a telegram reading as follows:

"Farmers and Merchants National Bank Lake City closed last night trying to reorganize Monday morning will you send us Garrett to help."

The telegram was received at the office of the Federal Reserve Bank of Richmond at about 11:30 A. M. Sunday, October 10th, and the contents thereof were immediately communicated to Mr. John T. Garrett, Manager of the Bank Relations Department of the Federal Reserve Bank of Richmond, who left Richmond that night for Lake City, and arrived there on the morning of October 11th. The telegram was in the hands of the proper officers of the Federal Reserve Bank at the opening of business on October 11th. The Farmers and Merchants National Bank of Lake City was not reorganized, or reopened, and (23) on the 18th day of October the Comptroller of the Currency appointed Thos. A. Early as Receiver for the Farmers and Merchants National Bank of Lake City upon the ground that the bank was insolvent.

13. On October 11th, 1926 between 12:00 and 1:00 P. M. Garrett talked over the telephone to the Federal Reserve Bank of Richmond.

14. On October 21, 1926, the Federal Reserve Bank of Richmond sent to the receiver a statement showing that it had transferred the balance of Seven Thousand

One Hundred and Eighty-seven Dollars and Eighty-six Cents ($7,187.86) mentioned above to a suspense account, and was holding the same. Prior to May 11, 1927 the Receiver had, on to-wit, the 19th day of February 1927, demanded the payment to him of said sum of $7,187.86, and the question of the right of the defendant to charge against said reserve account the amount of the checks in the said letters of October 7, 1926, had not been given consideration, but on May 11, 1927, acting under instructions of the Comptroller of the Currency, the receiver demanded that the Federal Reserve Bank of Richmond pay over to him the amount charged to the reserve account of the Farmers and Merchants National Bank of Lake City on account of checks contained in the letter of October 7th in addition to the above mentioned balance of Seven Thousand One Hundred and Eighty-seven Dollars and Eighty-six Cents ($7,187.86). The attached letters constitute part of the correspondence between the receiver and the Federal Reserve Bank of Richmond, copies of which are hereto attached, marked Exhibits 10 to 15, and made a part hereof. Either party may also introduce, at the trial, any other letters constituting part of said correspondence, subject to objection.

15. The Farmers and Merchants National Bank of Lake City was a member of the Federal Reserve System and had subscribed for and been allotted 78 shares of the stock of the Federal Reserve Bank of Richmond, and had paid in on said subscription the sum of Thirty-nine Hundred Dollars ($3,900.00), and dividends at the rate of 6% from June 30, 1926 have accrued thereon and are unpaid. The Receiver surrendered to the Federal Reserve Bank of Richmond the above mentioned stock, and on the 20th day of May 1927, demanded the surrender (24) value thereof, and the sum of $215.15 representing said accrued dividends, but said Reserve Bank has refused to pay same to said Receiver.

16. That under date of May 28, 1927, said Reserve Bank sent to all banks whose checks were contained in letter of October 7th a circular letter dated May 23rd, 1927, which letter reads as follows:

May 23, 1927

"Gentlemen:

The items listed below were received in your cash letter as shown. We sent them to the Farmers and Merchants National Bank of Lake City, South Carolina in our letter of October 7, 1926. They were received by that bank on October 8th and cancelled and charged to the accounts of the drawers. Under our time schedule checks in our letter of October 7th were chargeable to the reserve account of the Farmers and Merchants National Bank on Monday, October 11th. On the night of Saturday, October 9th, the Farmers and Merchants National Bank was closed by order of its directors. You were notified of such action on October 10th. On October 11th the Farmers and Merchants National Bank had in its reserve account a balance sufficient to cover the letter of October 7th; therefore we charged the amount of this letter to the reserve account and credited you with the amount of your items which were in the letter.

Recently the Receiver of the failed bank, acting by direction of the Comptroller of the Currency, notified us that it was the view of the Comptroller of the Currency that, since the Farmers and Merchants National Bank closed before the letter of October 7th was charged to its reserve account, we had no right to apply the reserve account, or any part of it, to the payment of checks contained in this letter. Accordingly the Receiver demanded that we should pay over to him the amount of the reserve account as shown on our books on the day that the Farmers and Merchants National Bank closed, and file a claim for the amount of the cash letter.

We have refused this demand, and the Receiver has stated that he is instructed to bring suit against us to recover the balance claimed by him. We shall defend this suit, but we are compelled to notify you that since the checks listed below were received by us as your agent, if we are compelled to refund the money collected upon them, we shall be compelled to charge the amount to your account.

Very truly yours,

EDW. WALLER, JR.,
Asst. Cashier.

17. Any party hereto may introduce, refer to, or rely upon, subject to objection, any letters exhibits or any (25) regulation of the Federal Reserve Board duly promulgated at the times mentioned above and all of such regulations so far as are in any way applicable to the above mentioned transactions shall be deemed a part of this stipulation.

(sgd) R. E. WHITING,
_____,
Attorneys for Receiver, Farmers and Merchants National Bank, Lake City, South Carolina.

(sgd) M. G. WALLACE,
Attorney for Federal Reserve Bank of Richmond."

EXHIBITS 1 TO 9

(Memorandum: In accordance with the stipulation of counsel the printing of these exhibits is omitted.)

EXHIBIT 10

(44) October 27, 1926

Federal Reserve Bank
Richmond, Va.

Gentlemen:

We are in receipt of your statement as of October 15, 1926 showing a balance in the amount of $7,187.86. This does not agree with our records with the following exceptions.

Our return item of October 9th amounting to $83.70. You forward credit advice as of October 11th. On October 14th you debit our account with this item, but do not return to us.

Our return item of October 11th amounting to $736.14. You forward credit advice as of October 12th. On Octo-

ber 14th you debit our account with this item, but do not return to us.

Our return item of October 11th amounting to $85.77. You credit our account October 13th. On October 14th you debit our account with this item, but do not return the item.

On October 12th you show a debit of a cash letter amounting to $21,041.02. Our records show that this letter has been entered and the checks charged to the depositors' accounts.

On October 14th you credit our account with three items—$10.00, $15.00, and $8.50, please give us a description of these items.

Therefore, according to our reconcilement, we show a balance due by you in the amount $8,093.47 against a balance due to you in the amount of $21,041.02.

Yours very truly,

(Signed) THOS. A. EARLY.
Receiver.

Nss

EXHIBIT 11

FEDERAL RESERVE BANK OF RICHMOND

October 29, 1926

C O P Y

Mr. Thomas A. Early, Receiver,
Farmers and Merchants National Bank,
Lake City, S. C.

Dear Sir:

Reference is made to your letter of October 27th regarding our statement of October 15th of the reserve account of the Farmers and Merchants National Bank.

With reference to cash letter for $21,041.02, we wish to advise that this amount was charged to the reserve ac-
(45) count on October 12th as stated by you. However, the balance in the reserve account was insufficient and

consequently it was necessary for us to charge the items to our respective endorsers with a view of filing a claim in their behalf for such items. To offset the debits to the endorsers our charge to the Farmers and Merchants National Bank had to be reversed, which accounts for our credit for the same amount on the same date.

The entries of October 12th for $21,041.02 represent our cash letter of October 8th. On the 12th we credited a return letter of $736.14, which we reversed on the 14th. This return letter covered items for $33.90, $600.00 and $100.44, plus protest fees of $1.80. The three cash items were included in our letter of October 8th and since the entire cash amount of the cash letter had been credited to you, we were in error in crediting the return items, and you will note that after reversing on the 14th our credit of the 12th for $736.14 we then credited $1.80 representing protest fees. On October 13th we credited a return item for $85.77, representing a return letter containing items for $7.49, $9.63 and $68.64. All of these items were listed in our cash letter of the 8th and consequently we were in error in giving credit for the return letter, since the amounts were included in our letter of October 12th for $21,041.02. Therefore, on October 14th we charged the Farmers and Merchants National Bank with $85.77 to reverse our credit of the 13th.

On October 11th we credited the Farmers and Merchants National Bank with a return letter of $83.70 containing items for $46.17, $1.25, $2.78, $15.00, $10.00 and $8.50. It was found that of the six items included in this return letter the first three were listed in our cash letter of October 8th and were included in our credit of October 12th, while the last three were listed in our cash letter of a previous date. Therefore, on the 14th we charged the Farmers and Merchants National Bank $83.70 to reverse our credit of the 11th and credited $15.00, $10.00 and $8.50 representing the three items that were listed in our cash letter prior to October 8th.

We believe that with the above explanation of the correcting entries, which were made in connection with return items that had been listed in the cash letter for which we propose to file a claim, you will be able to reconcile our balance. If, however, you are unsuccessful, and will send us a transcript of the account as shown on the books of the Farmers and Merchants National Bank of

Lake City, S. C., subsequent to October 11th, we will be very glad to render you all assistance possible.

Yours very truly,

(Signed) C. L. GUTHRIE, Manager,
Adjustment-Transfer Department

CLG:

EXHIBIT 12

(46) FEDERAL RESERVE BANK
OF RICHMOND

December 4, 1926

Mr. Thos. A. Early, Receiver,
Farmers & Merchants National Bank
Lake City, S. C.

Dear Sir:

I hand you herewith a proof of claim for the amount due by the Farmers & Merchants National Bank of Lake City to the Federal Reserve Bank of Richmond in settlement for a cash letter which was sent by the Federal Reserve Bank of Richmond to the Farmers and Merchants National Bank of Lake City.

As you know, the checks have been received by us for collection in accordance with the regulations of the Federal Reserve Board, and, therefore, the member banks and other persons who had deposited these checks for collection, are the equitable owners of this claim, but if the claim appears upon your books as due to the Federal Reserve Bank of Richmond, the Comptroller of the Currency has in other cases permitted the claim to be filed by us as a single claim; because this rendered the payment of dividends much more simple than it would be if a claim was filed upon each individual check in the letter.

You will notice that we have deducted from the amount

of our claim one check for $8.80. As stated in the proof of claim we received this check from the National Bank of Commerce in New York. They tell me that they do not wish a claim filed upon this check, so I presume that they and their customer have been reimbursed; consequently if the drawer of this check desires to file a claim in his own name it will be satisfactory to us. We have no other description of the check except that given, but if it is necessary to complete your record, we will endeavor to obtain it.

If upon inspection you find that our claim is in proper form, I will be obliged if you will issue to us a Receiver's certificate, and if it is practicable to do so at this time, I would like to have your rough estimate of the amount which will be paid as dividends by this trust. I know, of course, that any accurate estimate would be impossible, but I would like to have your best guess.

Very truly yours,

(signed) M. G. WALLACE,
Counsel.

MGW:IB

(47) THE FARMERS & MERCHANTS NATIONAL BANK OF LAKE CITY, S. C.

PROOF OF CLAIM

State of Virginia,
City of Richmond, ss:

Personally appeared before me, the undersigned, a Notary Public in and for said county and State, George H. Keesee, Cashier of the Federal Reserve Bank of Richmond, who being duly sworn, says that the Farmers & Merchants National Bank of Lake City, South Carolina is justly indebted to Federal Reserve Bank of Richmond as trustee for various of its depositors in the sum of Twelve thousand nine hundred and seventy-four dollars and five cents, upon the following, claim, to-wit:

Checks in cash letter from Federal Reserve Bank of Richmond dated October 8, 1926	$20,170.71	
Less reserve balance of Farmers and Merchants National Bank, Lake City with Federal Reserve Bank of Richmond...	7,187.86	
		12,982.85
Less and item for $8.80 received by Federal Reserve Bank of Richmond from National Bank of Commerce, New York	8.80	
		$12,974.05

Balance due on Savings Account..... ——— 66
Unremitted Collection No. —— ..... ——— ———

All of which is due and payable to Federal Reserve Bank of Richmond as above, having given no indorsement or assignment of the same or any part thereof, and Geo. H. Keesee, Cashier further says that....know of no set-off or other legal or equitable defense to said claim, or any part thereof.

Name Geo. H. Keesee

Address Federal Reserve Bank of Richmond

Sworn to and subscribed before me this 3rd day of December, A. D. 1926.

Witness my hand and notarial seal.

M. G. WALLACE,
Notary Public.

(48) **EXHIBIT 13**

FEDERAL RESERVE BANK
OF RICHMOND

January 17, 1927.

Mr. Thos. A. Early, Receiver
Farmers & Merchants National Bank
Lake City, S. C.

My Dear Mr. Early:

I have before me your letter of December 24, 1926 upon the subject of the application of the balance in the reserve account of the Farmers & Merchants National Bank of Lake City to our cash letter of October 8th.

In making the application of this balance, we are not in the strict sense of the word making an offset—that is we are not setting off against each other two claims arising out of independent transactions, but are applying to the partial payment of a claim a fund placed in our hands for the purpose of paying the claim.

Paragraph 4 of Section 5 of Regulation J issued by the Federal Reserve Board concerning the collection of checks is as follows:

"Checks received by a Federal reserve bank on its member or nonmember clearing banks will ordinarily be forwarded or presented direct to such banks, and such banks will be required to remit or pay therefor at par in cash or bank draft acceptable to collecting Federal reserve bank, or at the option of such Federal reserve bank to authorize such Federal reserve bank to charge their reserve accounts or clearing accounts; provided, however, that any Federal reserve bank may reserve the right in its check collection circular to charge such items to the reserve account or clearing account of any such bank at any time when in any particular case the Federal reserve bank deems it necessary to do so."

You will see from the above that the Federal Reserve

Board requires a member bank to authorize each Federal Reserve Bank to charge checks to the reserve account of the member bank.

In our collection circular it has always been understood between this Federal Reserve Bank, and the member banks of this District that we would not expect, or require them to remit us by draft in payment of cash letters, but would charge these cash letters to their reserve account, clearing the checks contained in the cash letters in this way.

This has been made clear in our circulars dealing with the collection of checks—the latest of which, No. 143, a copy of which is herewith enclosed, reads in part as follows:

"Checks received by us drawn on our member banks will be forwarded in cash letters direct to such banks and each member bank will be required to either remit therefor in immediately available funds or to provide funds available to us to meet such cash letters within the agreed transit time to and from the member bank. Therefore, the amount of any cash letter to a member (49) bank is chargeable against available funds in the reserve account of such member at the expiration of such transit time, which date will be shown on each cash letter. The right, is reserved, however, to charge a cash letter to the reserve account of a member bank at any time when in any particular case we deem it necessary to do so."

It seems to me that under the regulations of the Board, and under our circulars that as soon as a member bank cancels a check drawn upon itself, and sent to it by us, it becomes responsible for the payment of that check, and since the check was sent to it upon the faith of its reserve balance, and upon the understanding that its reserve balance would be chargeable with the amount of the checks, then our right to charge the amount of the checks to the reserve balance is absolute.

If the reserve balance had been equal to, or had exceeded, the amount of our cash letter, the propriety of charging the cash letter to the reserve balance would not have been open to the slightest question. It would have been done in the ordinary course of routine business, and

the matter would have been closed just as any payment through a clearing house is closed. I can see no reason why the rule should be different in a case in which the balance is not equal to the amount of the cash letter. In other words, it is the duty of the member bank to place in our hands a balance sufficient to cover the cash letter, but it could not claim a benefit from its own default, and take the position that by failing to pay in full, it deprived the holder of the check of the right to apply a part payment. You, of course, stand in the shoes of the member bank, and can assert only such rights as it might have asserted, and it, therefore, seems to me that you can make no objection to our application of the balance when such objection is based upon the fact that the member bank failed to place us in funds to pay the entire letter.

In other words, the application is not made under any theory of an offset allowed by statute, or by the rules of equity, but in strict application of the contract under which the checks were sent to the member bank.

I find few decided cases upon this subject. In fact, the precise question appears to have been presented in only one case—that is to say in Federal Reserve Bank of Minneapolis v First National Bank, 277 Fed. Rep. 300, a digest of which you will find in the Digest of Decisions Relating to National Banks for the years 1921-24, issued by the Comptroller of the Currency at page 92.

In discussing the particular point under consideration, the court says (277 Fed. Rep. P. 304.):

"From the time of the promulgation of this rule (Regulation J) the credit of a member bank with its Federal Reserve Bank was rightfully treated by the Reserve Bank as a fund to cover all checks received from or for its account by a member bank. Indeed, if this Reserve Bank, as a clearing house was to be made practical, if it were to be made possible for the banks to deal with it with any safety, the deposit account of this defendant bank must necessarily be treated as a fund to make good the balances in the clearing against defendant."

It seems to me that the above decision, and the plain words of the regulations of our circular, leave our rights

in this matter in no doubt, but if you still have doubt in the matter I will be glad if you will let me hear from you.

Very truly yours,

(Signed) M. G. WALLACE,
Counsel.

MGW:IB

(50) **EXHIBIT 14**

FEDERAL RESERVE BANK
OF RICHMOND

February 7, 1927.

Mr. Thos. A. Early, Receiver
Farmers & Merchants National Bank
Lake City, S. C.

Dear Sir:

I enclose you herewith a corrected proof of our claim against the failed bank.

Yours very truly,

(Signed) M. G. WALLACE,
Counsel.

MGW:IB

THE FARMERS & MERCHANTS NATIONAL BANK OF LAKE CITY, S. C.

PROOF OF CLAIM

State of Virginia,
City of Richmond, ss.

Personally appeared before me the undersigned, a Notary Public in and for said county and State, George

H. Keesee, Cashier of the Federal Reserve Bank of Richmond, who being duly sworn, says that the Farmers & Merchants National Bank of Lake City, South Carolina is justly indebted to Federal Reserve Bank of Richmond as trustee for various of its depositors in the sum of Twelve Thousand Nine Hundred and Eighty-Two dollars and Eighty-five cents, upon the following, claim, to-wit:

Checks in cash letter from Federal Reserve Bank of Richmond dated October 8, 1926	$20,170.71
Less reserve balance of Farmers and Merchants National Bank, Lake City with Federal Reserve Bank of Richmond...	7,187.86
	12,982.85

All of which is due and payable to Federal Reserve Bank of Richmond as above, having given no indorsement or assignment of the same or any part thereof, and Geo. H. Keesee, Cashier, further says that know of no set-off or other legal or equitable defense to said claim, or any part thereof.

Name Geo. H. Keesee, Cashier

Address Federal Reserve Bank of Richmond

Sworn to and subscribed before me this 3rd day of February, A. D. 1927.

Witness my hand and notarial seal.

M. G. WALLACE,
Notary Public.

(51) **EXHIBIT 15**

February 19, 1927

Mr. M. G. Wallace,
Federal Reserve Bank of Richmond,
Richmond, Va.

Dear Sir:—

The matter of your claim of about $12,000.00 against the Farmers and Merchants National Bank of Lake City, S. C., and your refusal up to this date to pay me the balance of the $8,059.97 held by the Federal Reserve Bank of Richmond and to sell and send the proceeds of the stock of this bank in the Federal Reserve Bank has been submitted to the Comptroller of Currency for consideration and instruction. We have also submitted copies of the correspondence and a detail of all the facts.

After careful study of the case, the office of the Comptroller has ruled that in as much as the Federal Reserve Bank has charged the items included in their second cash remittance letter of October 8, 1926 for $21,041.02 against the accounts of their respective member banks, then it is incumbent upon the Federal Reserve Bank to deliver to me this balance of $8,059.97 and to pay to me as receiver the proceeds of the capital stock of the Federal Reserve Bank which is held by this trust together with accrued dividends. In this event, the Federal Reserve Bank should be permitted to prove a claim of $21,041.02 as agents of the owners of the items covered by the second remittance letter.

The Comptroller's office did not take into consideration however, the return items included in your letter of $21,041.02. After deducting these items your balance would be $7,187.86 due the Farmers & Merchants National Bank. The proper settlement would be for the Federal Reserve Bank to pay to this trust the balance of $7,187.86 and the proceeds of the capital stock and accrued dividends. Then, file claim for your letter of $21,041.02 less the return items herein referred to.

The attorneys for this trust have given this case careful consideration and they are of the opinion that the

ruling of the Comptroller is in accordance with the law governing such cases.

Please advise at once whether you agree to this settlement.

Thanking you, I am

Very truly yours,

(Signed) THOS. A. EARLY,
Receiver.

TAE:L

Whereupon the plaintiff read in evidence Regulation (52) D, of the Series of 1924, duly promulgated by the Federal Reserve Board, and likewise read in evidence Regulation J, Series of 1920, duly promulgated by the Federal Reserve Board, which two Regulations are as follows:

(Memorandum: In accordance with the stipulation of counsel the printing of these Regulations is omitted.)

Neither party offered any other or further evidence.

Whereupon the plaintiff moved the court to find the (59) facts as set forth in the said stipulation and agreed statement of facts, and to rule and hold as a matter of law that upon the facts so established and found the plaintiff was entitled to recover from the defendant the amount demanded in his complaint upon the first and second causes of action; and to rule and hold as a matter of law that upon the facts so established and found the defendant was not entitled to offset or apply the demands set forth in its affirmative defense and counter-claim upon the amounts due by the defendant to the plaintiff on his first and second causes of action; and to enter judgment for the plaintiff against the defendant upon the first and second causes of action, as prayed in the complaint.

And the defendant moved the court to find the facts to be as stated in the said stipulation and agreed statement of facts, and moved the court to rule and hold as a matter of law that on the facts so established and found the plaintiff was not entitled to recover anything of the de-

fendant upon either the first or second causes of action; and to rule and hold as a matter of law that on the facts so established and found the defendant was entitled to establish a claim against the Farmers and Merchants National Bank of Lake City, as prayed in the affirmative defense and counter-claim; and moved the court to enter judgment for the defendant and against the plaintiff, establishing such claim and directing the plaintiff to certify to the Comptroller of the Currency as a proper claim against the Farmers and Merchants National Bank of Lake City the amount demanded by the defendant in its affirmative defense and counter-claim.

Whereupon the court found the facts to be as set forth in the stipulation and agreed statement of facts, and adopted paragraphs one to sixteen, inclusive, of the said stipulation and agreed statement of facts as special findings of fact by the court; and found as a matter of fact that Regulation J, Series of 1920, which is set forth above, was duly promulgated by the Federal Reserve Board until duly superseded by Regulation J, Series of 1924; and further found as a fact that Regulation D, Series of 1924, was duly promulgated and in force when the transactions in this suit took place.

And upon the facts so found the court ruled and held (60) as a matter of law that the plaintiff was entitled to recover of the defendant, both upon the plaintiff's first and second causes of action, the amount demanded in the complaint, to which ruling the defendant duly excepted.

And the court further ruled and held as a matter of law that the defendant was not entitled to set off or apply the claims and demands set forth in the affirmative defense and counter-claim against the amounts due by the defendant upon the plaintiff's first and second causes of action; and ruled and held that the defendant was not entitled to establish a claim against the Farmers and Merchants National Bank of Lake City as prayed in its affirmative defense, to which ruling the defendant excepted.

And the court proceeded to enter judgment as appears

in the record, to the entry of which judgment upon the facts as found by the court the defendant excepted.

Whereupon the defendant tendered this, its bill of exceptions, and prayed that the same might be signed and sealed and made a part of the record, which was accordingly done this 9th, day of May 1928.

ERNEST F. COCHRAN,
Judge of the District Court of the United States for the Eastern District of South Carolina.

ASSIGNMENTS OF ERROR

(61) Filed May 9, 1928.

Comes now the Federal Reserve Bank of Richmond and makes the following assignments of error upon which it will rely in the prosecution of an appeal from the judgment entered in this action:

1. The District court erred in ruling and holding that as a matter of law upon the uncontradicted facts of this case as established by the stipulation and agreed statement of facts filed herein, and as found by the court, the defendant was liable to the plaintiff upon his first cause of action.

2. The District court erred in ruling and holding that as a matter of law upon the uncontradicted facts of this case as established by the stipulation and agreed statement of facts filed herein, and as found by the court, the defendant was liable to the plaintiff upon his second cause of action.

3. The District court erred in ruling and holding that as a matter of law upon the uncontradicted facts as established by the stipulation and agreed statement of facts filed herein, and as found by the court, the de-

fendant was not entitled to set off and apply the claims and demands set forth in its affirmative defense and counter-claim against the plaintiff on his first and second causes of action, and was not entitled to establish against the Farmers and Merchants National Bank of Lake City a claim for the amount demanded in its affirmative defense and counter-claim.

4. The District court erred in entering judgment for the plaintiff and against the defendant upon the facts as found by the court.

FEDERAL RESERVE BANK
OF RICHMOND

By Counsel

M. G. WALLACE.

NOTICE OF APPEAL

(62) Filed May 9, 1928.

NOTICE OF APPEAL

To Thos. A. Early, Receiver of the Farmers and Merchants National Bank of Lake City, plaintiff in the above entitled action.

Take notice that the undersigned defendant in the above entitled action appeals from the judgment entered by the District Court of the United States for the Eastern District of South Carolina for the plaintiff and against the defendant the 9th, day of May 1928, and upon every part of such judgment.

FEDERAL RESERVE BANK
OF RICHMOND.

By Counsel

M. G. WALLACE.

Due service of the above notice accepted and delivery

of a copy thereof acknowledged this 9th day of May 1928.

R. E. WHITING,
Attorney of record for Thos. A. Early, Receiver of the Farmers & Merchants National Bank of Lake City.

STIPULATION FOR CLERK TO PREPARE TRANSCRIPT

(63) Filed May 9, 1928.

It is hereby stipulated and agreed that the Clerk of this Court shall make up a transcript of the record in the above styled cause, and transmit the same to the Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Va.; and that it be printed under the supervision of the Clerk of that Court, in accordance with Rule 23.

M. G. WALLACE,
Counsel for Federal Reserve Bank of Richmond.

R. E. WHITING,
Counsel for Thos. A. Early, Receiver.

May 9th, 1928.

STIPULATION OF COUNSEL AS TO EXHIBITS

It is further stipulated and agreed that exhibits 1 to 9, inclusive, attached to and forming a part of the agreed statement of facts and Regulation D, Series of 1924, and Regulation J, Series of 1920, which are set forth in the bill of exceptions, need not be printed, but that copies of

such exhibits and documents shall be furnished to the Circuit Court of Appeals at the time of oral argument.

M. G. WALLACE,
Counsel for Federal Reserve Bank of Richmond.

R. E. WHITING,
Counsel for Thos. A. Early, Receiver.

STIPULATION FOR MAKING UP RECORD

(64) Filed May 9, 1928.

It is hereby stipulated and agreed that the following portions of the records and proofs in above entitled cause shall be copied in making a transcript for the record for use in the United States Circuit Court of Appeals:

1. The complaint of the plaintiff.
2. The answer and affirmative defense and counterclaim of the defendant.
3. The reply of the plaintiff.
4. The stipulation waiving a trial by jury.
5. The judgment of the court.
6. The defendant's bill of exceptions.
7. Stipulation for printing of the record under the supervision of the Clerk of the Circuit Court of Appeals, as provided by Rule 23.
8. This stipulation.
9. The memorandum required by Section 7 of Rule 14 of the Circuit Court of Appeals for the Fourth Circuit.

The stipulation and agreed statement of facts and the exhibits filed thereunder referred to by the stipulation waiving a trial by jury and in the judgment of the court and in the bill of exceptions, need not be copied but once in the transcript.

M. G. WALLACE,
Counsel for Federal Reserve Bank of Richmond.

R. E. WHITING,
Counsel for Thos. A. Early, Receiver of the Farmers & Merchants National Bank, Lake City.

(65) **MEMORANDUM**

Notice of Appeal filed May 9, 1928.

Petition for appeal filed May 9, 1928.

Order allowing appeal filed May 9, 1928.

Bond on appeal $250.00, conditioned for costs.

Obligors: Federal Reserve Bank of Richmond, as principal, and Fidelity and Deposit Company of Maryland, as surety.

Citation filed May 9, 1928.

Service accepted and acknowledged May 9, 1928.

CLERK'S CERTIFICATE

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.
AT LAW.

I, Richard W. Hutson, Clerk of the District Court of the United States for the Eastern District of South Car-

olina, do hereby certify, that the foregoing is a true and correct copy of the record and proceedings in the case of Thos. A. Early, as Receiver of the Farmers and Merchants National Bank of Lake City, S. C., plaintiff, against The Federal Reserve Bank of Richmond, defendant, together with the Judgment and all papers relating to the same as stipulated and agreed by counsel to constitute the record on appeal, and as appears by the original record now on file and of record in my office.

Given under my hand and seal of said Court, at Charleston, S. C., this 12th day of May, 1928.

RICHARD W. HUTSON,
(SEAL) C. D. C. U. S. E. Dist. S. C.

EXHIBIT #1.

(Effective May 9, 1924)

REGULATION J
Series of 1924.
(Superseding Regulation J of 1920)

CHECK CLEARING AND COLLECTION.

SECTION I. STATUTORY PROVISIONS.

Section 16 of the Federal Reserve Act authorizes the Federal Reserve Board to require each Federal Reserve Bank to exercise the functions of a clearing house for its member banks, and Section 13 of the Federal Reserve Act, as amended by the act approved June 21, 1917, authorizes each Federal Reserve Bank to receive from any non-member bank or trust company, solely for the purposes of exchange or of collection, deposits of current funds in lawful money, national-bank notes, Federal Reserve notes, checks and drafts payable upon presentation, or maturing notes and bills, provided such nonmember bank or trust company maintains with its Federal Reserve Bank a balance sufficient to offset the items in transit held for its account by the Federal Reserve Bank.

SECTION II. GENERAL REQUIREMENTS.

In pursuance of the authority vested in it under these provisions of law, the Federal Reserve Board, desiring to afford both to the public and to the various banks of the country a direct, expeditious, and economical system of check collection and settlement of balances, has arranged to have each Federal Reserve Bank exercise the functions of a clearing house and collect checks for such of its member banks as desire to avail

themselves of its privileges and for such nonmember State banks and trust companies as may maintain with the Federal Reserve Bank balances sufficient to qualify them under the provisions of section 13 to send items to Federal Reserve Banks for purposes of exchange or of collection. Such nonmember State banks and trust companies will hereinafter be referred to as nonmember clearing banks.

Each Federal Reserve Bank shall exercise the functions of a clearing house and collect checks under the general terms and conditions hereinafter set forth.

SECTION III. CHECKS RECEIVED FOR COLLECTION.

(1) Each Federal Reserve Bank will receive at par from its member banks and from nonmember clearing banks in its district, checks* drawn on all member and nonmember clearing banks, and checks drawn on all other nonmember banks which are collectable at par in funds acceptable to the Federal Reserve Bank of the district in which such nonmember banks are located.

(2) Each Federal Reserve Bank will receive at par from other Federal Reserve Banks, and from all member and nonmember clearing banks in other Federal Reserve Districts which are authorized to route direct for the credit of their respective Federal Reserve Banks, checks drawn on all member and nonmember clearing banks of its district, and checks drawn on all other nonmember banks of its district which are collectable at par in funds acceptable to the collecting Federal Reserve Bank.

(3) No Federal Reserve Bank shall receive on deposit or for collection any check drawn on any nonmember bank which cannot be collected at par in funds acceptable to the Federal Reserve Bank of the district in which such nonmember bank is located.

*A check is generally defined as a draft or order upon a bank or banking house, purporting to be drawn upon a deposit of funds, for the payment at all events of a certain sum of money to the order of a certain person therein named, or to him or his order, or to bearer, and payable on demnad.

SECTION IV. TIME SCHEDULE AND AVAILABILITY OF CREDITS.

(1) Each Federal Reserve Bank will publish a time schedule showing the time at which any item sent to it will be counted as reserve and become available for withdrawal or other use by the sending bank. For all checks received, the sending bank will be given immediate credit, or deferred credit, in accordance with such time schedule, and as provided below.

(2) For all such checks as are received for immediate credit in accordance with such time schedule, immediate credit, subject to final payment, will be given upon the books of the Federal Reserve Bank at full face value in the reserve account or clearing account upon day of receipt, and the proceeds will at once be counted as reserve and become available for withdrawal or other use by the sending bank.

(3) For all such checks as are received for deferred credit in accordance with such time schedule, deferred credit, subject to final payment, will be entered upon the books of the Federal Reserve Bank at full face value, but the proceeds will not be counted as reserve nor become available for withdrawal or other use by the sending bank until such time as may be specified in such time schedule, at which time credit will be transferred from the deferred account to the reserve account or clearing account subject to final payment and will then be counted as reserve and become available for withdrawal or other use by the sending bank.

SECTION V. TERMS OF COLLECTION.

The Federal Reserve Board hereby authorizes the Federal Reserve Banks to handle such checks subject to the following terms and conditions; and each member and nonmember clearing bank which sends checks to any Federal Reserve Bank for deposit or collection shall by such action be deemed (a) to authorize the Fed-

eral Reserve Banks to handle such checks subject to the following terms and conditions, (b) to warrant its own authority to give the Federal Reserve Bank such authority, and (c) to agree to indemnify any Federal Reserve Bank for any loss resulting from the failure of such sending bank to have such authority.

(1) A Federal Reserve Bank will act only as agent of the bank from which it receives such checks and will assume no liability except for its own negligence and its guaranty of prior indorsements.

(2) A Federal Reserve Bank may present such checks for payment or send such checks for collection direct to the bank on which they are drawn or at which they are payable, or in its discretion may forward them to another agent with authority to present them for payment or send them for collection direct to the bank on which they are drawn or at which they are payable.

(3) A Federal Reserve Bank may in its discretion and at its option, either directly or through an agent, accept either cash or bank drafts in payment of or in remittance for such checks and shall not be held liable for any loss resulting from the acceptance of bank drafts in lieu of cash, nor for the failure of the drawee bank or any agent to remit for such checks, nor for the nonpayment of any bank draft accepted in payment or as a remittance from the drawee bank or any agent.

(4) Checks received by a Federal Reserve Bank on its member or nonmember clearing banks will ordinarily be forwarded or presented direct to such banks, and such banks will be required to remit or pay therefor at par in cash or bank draft acceptable to the collecting Federal Reserve Bank, or at the option of such Federal Reserve Bank to authorize such Federal Reserve Bank to charge their reserve accounts or clearing accounts; provided, however, that any Federal Reserve Bank may reserve the right in its check collection circular to charge such items to the reserve account or clearing account

of any such bank at any time when in any particular case the Federal Reserve Bank deems it necessary to do so.

(5) Checks received by a Federal Reserve Bank payable in other districts will be forwarded for collection upon the terms and conditions herein provided to the Federal Reserve Bank of the district in which such checks are payable.

(6) The amount of any check for which payment in actually and finally collected funds is not received shall be charged back to the forwarding bank, regardless of whether or not the check itself can be returned.

SECTION VI. OTHER RULES AND REGULATIONS.

Each Federal Reserve Bank shall also promulgate rules and regulations not inconsistent with the terms of the law or of this regulation, governing the details of its check clearing and collection operations. Such rules and regulations shall be set forth by the Federal Reserve Banks in their letters of instruction to their member and non-member clearing banks and shall be binding upon any member or nonmember clearing bank which sends any check to such Federal Reserve Bank for collection or to any other Federal Reserve Bank for the account of such Federal Reserve Bank for collection.

FEDERAL RESERVE BOARD.

EXHIBIT #2.

CIRCULAR NO. 143
Effective July 1, 1926
(Superseding Circular No. 131)

FEDERAL RESERVE BANK OF RICHMOND
COLLECTION OF CHECKS.

To Member Banks of the Fifth Federal Reserve District:

This circular sets forth fully the terms and conditions under which deposits of cash items will be accepted by the Federal Reserve Bank of Richmond (or its Baltimore Branch) and supersedes our Circular No. 131 of June 15, 1923. It is entirely optional with member banks whether they will avail themselves of the check collection facilities of the Federal Reserve System, but all member banks are requested to familiarize themselves with the contents of this circular, since in any event we will collect checks drawn on all member banks and this circular likewise deals with the duties of banks to which cash items are sent.

All references to the Federal Reserve Bank of Richmond apply to the Baltimore Branch as well as to the Head Office. Member banks located in the territory assigned to the Baltimore Branch should deal with the Branch at Baltimore as heretofore; those in the territory of the Head Office should deal with the Head Office at Richmond.

ITEMS WHICH WILL BE RECEIVED.

The following items will be received under the conditions of this circular:

(1) Checks* drawn on banking institutions in the United States which are listed on the Par List issued by the Federal Reserve Board semi-annually and supplemented monthly.

(2) Checks and warrants drawn on the Treasurer of the United States.

ITEMS WHICH WILL NOT BE ACCEPTED AS CASH ITEMS.

The following classes of items will not be received by us as cash items and should not be sent to us in cash

*A check is generally defined as a draft or order upon a bank or banking house, purporting to be drawn upon a deposit of funds, for the payment at all events of a certain sum of money to a certain person therein named, or to him or his order, or to bearer, and payable instantly on demand.

letters. Such items should be sent to us only as non-cash items for credit when paid.

(1) Checks which cannot be collected at par; that is, checks drawn on banks which are not listed on the Par List of the Federal Reserve Board. Such items will not be received either as cash items under this circular or as collection items under our Circular No. 144, "Collection of Maturing Notes, Bills and Other Non-Cash Items."

(2) Checks not drawn on banking institutions or checks "Payable through" instead of being drawn on a bank, such as drafts on Auditors or Treasurers of railroads.

(3) Checks which have been previously presented and dishonored or protested.

(4) Checks or drafts with pass book, certificate, or any form of receipt attached.

(5) Checks bearing special instructions or requiring special handling.

(6) Certificates of deposit.

(7) All non-cash collection items as enumerated in our Circular No. 144 relative to "Collection of Maturing Notes, Bills and Other Non-Cash Items."

CONDITIONS UNDER WHICH ITEMS WILL BE RECEIVED.

Every bank sending checks or other cash items to the Federal Reserve Bank of Richmond, or to another Federal reserve bank direct for our account, by such act will be understood to have agreed to the terms and conditions of this circular and of Regulation J of the Federal Reserve Board.

Terms of Collection

Regulation J of the Federal Reserve Board prescribes the following terms and conditions under which all Federal reserve banks will handle checks for member and non-member clearing banks when received for deposit or collection:

"The Federal Reserve Board hereby authorizes the Federal reserve banks to handle such checks subject to the following terms and conditions; and each member and non-member clearing bank which sends checks to any Federal reserve bank for deposit or collection shall by such action be deemed (a) to authorize the Federal reserve banks to handle such checks subject to the following terms and conditions, (b) to warrant its own authority to give the Federal reserve banks such authority, and (c) to agree to indemnify any Federal reserve bank for any loss resulting from the failure of such sending bank to have such authority.

"(1) A Federal reserve bank will act only as agent of the bank from which it receives such checks and will assume no liability except for its own negligence and its guaranty of prior endorsements.

"(2) A Federal reserve bank may present such checks for payment or send such checks for collection direct to the bank on which they are drawn or at which they are payable, or in its discretion may forward them to another agent with authority to present them for payment or send them for collection direct to the bank on which they are drawn or at which they are payable.

"(3) A Federal reserve bank may in its discretion and at its option, either directly or through an agent, accept either cash or bank drafts in payment of or in remittance for such checks and shall not be held liable for any loss resulting from the acceptance of bank drafts in lieu of cash, nor for the failure of the drawee bank or any agent to remit for such checks, nor for the non-

payment of any bank draft accepted in payment or as a remittance from the drawee bank or any agent.

"(4) Checks received by a Federal reserve bank on its member or non-member clearing banks will ordinarily be forwarded or presented direct to such banks, and such banks will be required to remit or pay therefor at par in cash or bank draft acceptable to the collecting Federal reserve bank, or at the option of such Federal reserve bank to authorize such Federal reserve bank to charge their reserve accounts or clearing accounts; provided, however, that any Federal reserve bank may reserve the right in its check collection circular to charge such items to the reserve account or clearing account of any such bank at any time when in any particular case the Federal reserve bank deems it necessary to do so.

"(5) Checks received by a Federal reserve bank payable in other districts will be forwarded for collection upon the terms and conditions herein provided to the Federal reserve bank of the district in which such checks are payable.

"(6) The amount of any check for which payment in actually and finally collected funds is not received shall be charged back to the forwarding bank, regardless of whether or not the check itself can be returned."

CHECKS AND WARRANTS DRAWN UPON THE TREASURER OF THE UNITED STATES.

The Treasurer of the United States reserves the usual right of the drawee to examine, when received, all Government warrants and checks and to refuse payment thereon, and the Federal Reserve Bank of Richmond will handle such items in accordance with the provisions of Treasury Department Circular No. 176, as amended and supplemented May 15, 1922.

Method of Handling

(1) The Treasurer will return immediately any war-

rant or check, payment of which is refused on account of forged signature of drawer, insufficient funds, stoppage of payment, or any material defect discovered upon first examination. Such items will be charged back and returned to the depositing bank for immediate credit.

(2) In the event that any warrant or check which has been paid by the Treasurer is subsequently found to bear a forged endorsement, or to have been raised, or to bear any other material alteration or defect which was not discoverable upon first examination, a photographic copy of the warrant or check will be sent to the depositing bank, but its account will not be charged pending adjustment.

(3) In cases of warrants or checks bearing a forged signature of the drawer, not discovered upon first examination by the Treasurer, and in other cases where the Treasurer's right to reclaim is in question, the warrants or checks will not be charged to the account of the depositing bank but will be returned to it as collection items for adjustment.

AVAILABILITY OF PROCEEDS.

Such checks as are receivable for immediate availability in accordance with our current time schedule will be credited upon day of receipt, subject to final payment, in the reserve accounts of member banks, and the proceeds will then be available for reserve and checking purposes.

Such checks as are receivable for deferred availability in accordance with our current time schedule will be credited upon day of receipt in the deferred credit accounts of member banks, and at the expiration of the time specified in our current time schedule such credits will become available for reserve and checking purposes and will be transferred from the deferred accounts to the reserve accounts of the member banks, subject to final payment of the items.

Member banks must bear in mind that our time schedule is based upon the average time required for collection and, therefore, advices received from us show-

ing the availability of items cannot be considered as advices of actual payment on the date of availability. Items in all cases are credited subject to final payment in accordance with the paragraph, "Conditions Under Which Items Will Be Received" on page 2 of this circular.

PREPARATION OF CASH LETTERS.

All cash items sent to us should be sorted and listed on cash letters in accordance with the divisions of our current time schedule, using a separate letter for items of each separate availability; that is to say, items immediately available should be listed on one letter, items available one day after receipt should be listed on another letter, items available two days after receipt on another letter, and so on. This is important, since credit for the proceeds of any letter containing items of different availabilities will be deferred to the date of availability of the items contained therein requiring the longest time for collection according to our time schedule.

Indicate on cash letters, opposite the amount of each item, the name or transit number of the bank upon which each item is drawn.

ENDORSEMENT OF CHECKS.

All items sent to us must be endorsed, without restriction, to the order of any bank, banker or trust company; or to the order of the Federal Reserve Bank of Richmond (or Baltimore Branch). All prior endorsements must be guaranteed. The endorsements should be dated and should also contain the American Bankers Association transit number of the depositing bank.

UNIFORM INSTRUCTIONS.

The Federal Reserve Bank of Richmond will receive and forward checks as cash items under the conditions of this circular, subject only to the following uniform instructions:

(1) *Do not protest*-items of $10.00 or less.

(2) *Protest* dishonored items of $10.01 or over, except those bearing on their face the A. B. A. no protest symbol of the Federal reserve bank or of a preceding bank endorser.

(3) *Wire advice* of non-payment of all items of $500 or over.

All Federal reserve banks (and branches) will receive and handle checks as cash items only in accordance with these uniform instructions, and any contrary or special instructions noted on cash letters or attached to checks will be disregarded. If any member bank should desire to have any checks handled by the Federal Reserve Bank of Richmond or by any other Federal reserve bank under any instructions contrary to the uniform instructions given above, it will be necessary for such member bank to forward such checks as individual no-cash items, with the instructions noted in the letter of transmittal, for collection and credit when paid, in accordance with the terms of our Circular No. 144 of July 1, 1926.

TELEGRAPHIC COSTS.

All telegraphic costs pertaining to payment or nonpayment, or in connection with receiving or transmitting any other information or instructions, will be charged to the account of the depositing bank. All such telegrams to the depositing bank will be sent "Collect".

DIRECT ROUTING OF CASH LETTERS TO OTHER FEDERAL RESERVE BANKS AND BRANCHES.

Member banks will be permitted, under certain conditions and regulations, to route checks payable in other Federal Reserve Districts direct to the other Federal Reserve Banks and Branches of the districts in which the items are payable, for our account, provided permission to do so is first obtained from the Federal Reserve

Bank of Richmond. Member banks desiring to avail themselves of this privilege will write us for permission (if permission has not already been obtained) and, if granted by us, they will be advised in a separate letter giving full information and complete instructions.

INDIRECT ROUTING OF CHECKS.

In the interests of good banking, the indirect routing of checks will be discouraged and member banks will not be permitted to deposit with us, or send direct to other Federal Reserve Banks or Branches for our account, any checks payable in other Federal Reserve Districts, which bear the endorsement of banks located in other Federal Reserve Districts, in cases where it is evident that such checks have been routed indirectly.

OUR CASH LETTERS TO MEMBER BANKS.

Checks received by us drawn on our member banks will be forwarded in cash letters direct to such banks and each member bank will be required either to remit therefor in immediately available funds or to provide funds available to us to meet such cash letters within the agreed transit time to and from the member bank. Therefore, the amount of any cash letter to a member bank is chargeable against available funds in the reserve account of such member at the expiration of such transit time, which date will be shown on each cash letter. The right is reserved, however, to charge a cash letter to the reserve account of a member bank at any time when in any particular case we deem it necessary to do so.

A space has been provided on the face of each envelope in which our cash letters are forwarded for the use of member banks in reporting undue delays in the mails. Should any letter be unduly delayed in transit and not be received by the member bank in time for remittance to be made to reach us on the date the letter is chargeable to its reserve account, advice of such delay should be given us by filling in the information called for in the space provided on the face of the envelope in which such cash letter was received and the entire en-

velope should be returned to us promptly. Proper allowance will be made in the reserve account of the member bank.

A self addressed stamped envelope will be forwarded each day with our cash letters to member banks for their use in remitting to us and in returning the acknowledgment coupons attached to our cash letters. It is extremely important that each coupon be promptly signed or stamped by the receiving bank and *immediately* returned to us in the stamped envelope as an acknowledgment of receipt of the letter. Member banks may use this stamped envelope for making remittances, but in any event the coupon should be returned *immediately upon receipt.*

UNPAID ITEMS RETURNED BY MEMBER BANKS.

Unpaid items not subject to protest must be returned to us on day of receipt. Items held for protest must be returned to us not later than the day following that of receipt. In no case should an unpaid item be held for any purpose except for immediate protest. A slip should be attached to each return item showing plainly the reason for non-payment. Return items should be listed in a separate letter *containing only return items* and credit for such letters will be given upon receipt.

FEDERAL RESERVE DISTRICT NUMBERS ON CHECKS.

To facilitate the sorting and routing of checks by member banks and by Federal Reserve Banks, you are requested to have the figure "5" (signifying Federal Reserve District No. 5) printed in large skeleton type (1½ inches or more high) in the center of all check blanks on your bank. Checks drawn by your bank on banks in other Federal Reserve districts should have printed on them, in a similar manner, a large skeleton figure denoting the Federal Reserve district in which the bank on which they are drawn is located.

COLLECTABLE AT PAR THROUGH THE FEDERAL RESERVE BANK OF RICHMOND.

All member banks (and those non-member banks which agree to remit at par in acceptable funds to the Federal Reserve Bank of Richmond are entitled to have the words "collectable at par through the Federal Reserve Bank of Richmond" printed or stamped on their own checks and the checks drawn on them by their depositors. Attention is called to the desirability of availing of this privilege, since it is manifest that checks on those banks which agree to remit at par should have wider currency than checks not collectable at par through the Federal Reserve Banks.

Respectfully,

FEDERAL RESERVE BANK OF RICHMOND.

EXHIBIT #3.

FEDERAL RESERVE BANK OF RICHMOND

Fifth Federal Reserve District.

TIME SCHEDULE.

Schedule showing when proceeds of cash items on the Cities and States listed herein will become available for reserve and checking purposes, when sent to Federal Reserve Bank of Richmond for collection and credit in accordance with the terms and conditions of Circular No. 131, "Collection of Checks".

Effective June 15, 1923, until further notice.

THREE DAYS AFTER RECEIPT.

Cities	States—except Cities listed in first column
Dallas	Delaware
Houston	New Jersey
Kansas City, Kansas	New York
(Routed to Kansas City, Mo.)	North Carolina
Kansas City, Mo.	Pennsylvania
Little Rock	South Carolina
Memphis	West Virginia
Minneapolis	
New Orleans	
Oklahoma City	
Omaha	
St Paul	
(Route to Minneapolis)	

List all items in accordance with the divisions of this Time Schedule, using a separate letter for items of each separate availability; that is, items available immediately upon receipt should be listed on one letter, items available one day after receipt should be listed on another letter, items available two days after receipt on another letter, and so on. This is important, since credit for any letter containing items of different availabilities will be deferred to the date of availability of the items contained therein requiring the longest time for collection according to this schedule.

Indicate on cash letters, opposite the amount of each item, the name or transit number of the bank upon which the item is drawn.

Note—Our Time Schedule is based upon the average time required for collection; therefore, advices received from us showing the availability of items cannot be considered as advices of actual payment. Items in all cases are credited subject to final payment.

See following page for Deferred Time Table.

DEFERRED TIME TABLE.

The following table shows the method used by the

Federal Reserve Bank of Richmond in determining the day of availability of letters containing items for deferred credit in accordance with pages 2 and 3 of this Time Schedule.

When a letter is received by us on a day indicated in first column, credit will be deferred until the day opposite on the same line, according to whether such letter contained items available one day or two days or three days, etc., after receipt, according to our Time Schedule.

This table is based on actual business days, except where items, after receipt by us, are in transit on Sundays or holidays, in which case actual calendar days are counted in determining the day of availability. Items reaching destination on a Sunday or a holiday are not considered in transit on those days, as the bank to which we send them cannot handle them until the following day.

When Received on	1-Day Letters Available on	2-Day Letters Available on	3-Day Letters Available on	4-Day Letters Available on	5-Day Letters Available on	6-Day Letters Available on	8-Day Letters Available on
Monday	Tuesday.	Wednesday.	Thursday.	Friday.	Saturday.	Monday.	Wednesday.
Tuesday	Wednesday.	Thursday.	Friday.	Saturday.	Monday.	*Tuesday.	Wednesday.
Wednesday	Thursday.	Friday.	Saturday.	Monday.	*Tuesday.	Tuesday.	Thursday.
Thursday	Friday.	Saturday.	Monday.	*Tuesday.	Tuesday.	*Thursday.	Friday.
Friday	Saturday.	Monday.	*Tuesday.	*Wednesday.	*Thursday.	Thursday.	Saturday.
Saturday	Monday.	*Tuesday.	Tuesday.	Wednesday.	Thursday.	Friday.	Monday.

*Except items drawn on Federal Reserve Bank or Branch Cities which will be available one day earlier.
When date of availability falls on a legal holiday credit will be given on the next business day.

EXHIBIT #4.

FEDERAL RESERVE BANK OF RICHMOND,

Richmond, Va.

Gentlemen:

The undersigned member bank hereby acknowledges receipt of Circular No. 143, of the Federal Reserve Bank of Richmond, regarding the "Collection of Checks", effective July 1, 1926, setting forth the terms and conditions under which cash items as specified in the circular will be received for collection from the undersigned member bank by the Federal Reserve Bank of Richmond or by another Federal reserve bank for its account, which circular supersedes Circular No. 131 of June 15, 1923.

Yours very truly,

FARMERS & MERCHANTS NAT BANK.
Bank
Lake City, S. C.
Location

By R. H. McELVEN.
Cashier (Official Signature)

7-9-26
Date

T 36 **EXHIBIT #5.** No. 88443

68-3 FEDERAL RESERVE BANK OF RICHMOND 68-3

To
Farmers & Merchants Nat'l Bank, Dispatched Oct 7 1929

Lake City, Chargeable against available balance in Reserve account Oct 11 1926

67-239 S. C.

We enclose for collection the checks listed below. PROTEST dishonored items of $10.01 or over, except those bearing on their face this stamp { N. P. / 68-3 } or a similar stamp of a preceding bank endorser. Do not protest items of $10 or less. WIRE ADVICE of non-payment of *all items of* $500 *or over*, giving the date of our letter, the ENDORSEMENT IMMEDIATELY PRECEDING OURS, and the reason for non-payment. Please detach and return the accompanying coupon as acknowledgment, using "PAID" stamp in space provided.

FEDERAL RESERVE BANK OF RICHMOND.

(Checks listed aggregating in amount $14,934.12)

T 36 **EXHIBIT #6.**

FEDERAL RESERVE BANK OF RICHMOND

No. 88443

Your CASH LETTER
has been received and collected this day. Dated
Any unpaid items have been returned in a separate letter. Total,

Use "PAID" stamp (including date) in this space to acknowledge receipt.

Oct. 8, 1926

PAID

Farmers & Merchants National Bank
Lake City, S. C.

Farmers & Merchants Nat'l Bank,
Lake City,
S. C.

67-239 Oct 7 1926

14,934.12 Oct 11 1926

T 36 **EXHIBIT #7.** No. 88942

68-3 FEDERAL RESERVE BANK OF RICHMOND 68-3

To

Farmers & Merchants Nat'l Bank, Dispatched Oct 8 1926

67-239 Lake City, S. C. Chargeable against available balance in Reserve Account Oct 12 1926

We enclose for collection the checks listed below. PROTEST dishonored items of $10.01 or over, except those bearing on their face this stamp { N. P. / 68-3 } or a similar stamp of a preceding bank endorser. Do not protest items of $10 or less. WIRE ADVICE of non-payment of *all items of* $500 *or over*, giving the date of our letter, the ENDORSEMENT IMMEDIATELY PRECEDING OURS, and the reason for non-payment. Please detach and return the accompanying coupon as acknowledgment, using "PAID" stamp in space provided.

FEDERAL RESERVE BANK OF RICHMOND.

(Checks listed aggregating in amount 21,041.02)

T 36 **EXHIBIT #8.**

FEDERAL RESERVE BANK OF RICHMOND No. 88942

Your CASH LETTER has been received and collected this day. Dated

Any unpaid items have been returned in a separate letter. Total,

Use "PAID" stamp (including date) in this space to acknowledge receipt.

Oct. 9, 1926

PAID

Farmers & Merchants National Bank
Lake City, S. C.

Farmers & Merchants Nat'l Bank,
Lake City,
S. C.

67-239 Oct 8 1926

21,041.02 Oct 12 1926

BK-9 FEDERAL RESERVE BANK OF RICHMOND

NAME FARMERS & MERCHANTS NAT'L BANK

ADDRESS LAKE CITY, S. C.

OLD BALANCE		DEBITS			
14	28,793.03				
15	28,834.02	Sep 15	DS	15,362.00—	
15	43,472.02				
16	43,564.97	Sep 16	RM	19,694.16—DS	1,500.00—
16	52,592.26	Sep 16	CY	10,000.00—CY	7,500.00—
17	35,092.26	Sep 17	RM	29,265.81—ER	.01—
17	58,355.11				
18	58,403.18	Sep 18	RM	26,911.42—IN	33.57—
18	55,180.18				
20	55,733.06	Sep 20	RM	31,918.99—DS	3,075.00—
		Sep 20	CL	175.30—	
20	35,563.77				
21	35,646.87	Sep 21	RM	16,500.72—RM	32,698.52—
		Sep 21	DS	2,600.00—	
22	34,103.93	Sep 22	DS	1,200.00—	
22	47,903.93	Sep 22	TR	2,700.00—	
23	45,644.41	Sep 23	RM	31,077.56—DS	100.00—
23	35,029.86	Sep 23	DS	29,149.15—CY	1,000.00—
		Sep 23	CY	2,000.00—	
24	2,880.71	Sep 24	RM	21,464.36—	
25	41,580.85	Sep 25	RM	22,160.96—	
27	54,617.94	Sep 27	RM	21,219.08—	
27	53,398.86				
28	53,564.97	Sep 28	RM	28,513.38—RM	16,538.06—
29	38,574.20				
30	53,589.30	Sep 30	RM	23,634.45—	
30	59,962.62	Sep 30	CY	6,000.00—CY	4,000.00—
		Sep 30	CY	800.00—	
1	49,162.62	Oct 1	RM	20,657.18—	
1	48,505.44				
2	48,523.40	Oct 2	RM	14,202.32—	
4	49,390.83	Oct 4	RM	11,203.30—	
4	58,187.53	Oct 4	TR	1,900.00—	
5	56,799.06	Oct 5	RM	17,530.10—RM	33,368.95—
5	35,900.01				
6	36,899.31	Oct 6	RT	12.15—	
6	36,887.16				
7	36,960.50	Oct 7	RM	42,401.94—	
7	34,696.33	Oct 7	TR	2,500.00—	
8	32,196.33	Oct 8	RM	33,165.53—CL	200.00—
		Oct 8	CL	200.00—	
38	18,781.16				
9	26,781.16	Oct 9	RM	21,848.99—	
9	21,932.17				
11	22,085.52	Oct 11	RM	14,934.12—ER	.04—
11	12,151.36				
11	12,235.06	Oct 11	RT	5,000.00—	
12	7,235.06	Oct 12	RM	21,041.02—RM	26,230.39—
12	13,069.82—				
13	7,971.20				
14	8,056.97	Oct 14	ER	83.70—ER	736.13—
		Oct 14	ER	85.77—	
14	7,186.66				
15	7,187.26				
21	7,187.86	Oct 21	TR	7,187.86—	

EXHIBIT #9.

BACK

Year 1926

			CREDITS			NEW BALANCE		
Sep	14	RT	40.99			Sep	14	28,834.02*
Sep	15	RM	20,000.00	RM	10,000.00	Sep	15	43,472.02*
Sep	15	RT	92.95			Sep	15	43,564.97*
Sep	16	RM	30,000.00	RT	221.45	Sep	16	52,592.26*
Sep	16					Sep	16	35,092.26*
Sep	17	TR	15,000.00	RM	37,528.67	Sep	17	58,355.11*
Sep	17	RT	48.07			Sep	17	58,403.18*
Sep	18	RM	23,721.99			Sep	18	55,180.18*
Sep	18	RT	552.88			Sep	18	55,733.06*
Sep	20	RM	15,000.00			Sep	20	35,563.77*
Sep	20	RT	83.10			Sep	20	35,646.87*
Sep	21	RM	256.30	RM	30,000.00			
Sep	21	RM	20,000.00			Sep	21	34,103.93*
Sep	22	RM	15,000.00			Sep	22	47,903.93*
Sep	22	RT	440.48			Sep	22	45,644.41*
Sep	23	RT	563.01	RM	20,000.00	Sep	23	35,029.86*
Sep	23					Sep	23	2,880.71*
Sep	24	RT	164.50	RM	30,000.00			
Sep	24	RM	30,000.00			Sep	24	41,580.85*
Sep	25	RM	198.05	RM	15,000.00			
Sep	25	RM	20,000.00			Sep	25	54,617.94*
Sep	27	RM	20,000.00			Sep	27	53,398.86*
Sep	27	RT	166.11			Sep	27	53,564.97*
Sep	28	RT	60.67	RM	30,000.00	Sep	28	38,574.20*
Sep	29	RT	15.10	RM	15,000.00	Sep	29	53,589.30*
Sep	30	RT	7.77	RM	30,000.00	Sep	30	59,962.62*
Sep	30					Sep	30	49,162.62*
Oct	1	RM	20,000.00			Oct	1	48,505.44*
Oct	1	RT	17.96			Oct	1	48,523.40*
Oct	2	RT	69.75	RM	15,000.00	Oct	2	49,390.83*
Oct	4	RM	20,000.00			Oct	4	58,187.53*
Oct	4	RT	511.53			Oct	4	56,799.06*
Oct	5	RM	30,000.00			Oct	5	35,900.01*
Oct	5	RT	999.30			Oct	5	36,899.31*
Oct	6					Oct	6	36,887.16*
Oct	6	RT	73.34			Oct	6	36,960.50*
Oct	7	RT	137.77	RM	20,000.00			
Oct	7	TR	20,000.00			Oct	7	34,696.33*
Oct	7					Oct	7	32,196.33*
Oct	8	RT	5,150.36	RM	15,000.00	Oct	8	18,781.16*
Oct	38	TR	8,000.00			Oct	38	26,781.16*
Oct	9	TR	10,000.00	RM	7,000.00	Oc	9	21,932.17*
Oct	9	RT	153.35			Oct	9	22,085.52*
Oct	11	RM	5,000.00			Oct	11	12,151.36*
Oct	11	RT	83.70			Oct	11	12,235.06*
Oct	11					Oct	11	7,235.06*
Oct	12	RT	26,230.39	RT	736.14	Oct	12	13,069.82OB
Oct	12	RT	21,041.02			Oct	12	7,971.20*
Oct	13	RT	85.77			Oct	13	8,056.97*
Oct	14	RT	15.00	RT	10.00			
Oct	14	RT	8.50	RT	1.80	Oct	14	7,186.66*
Oct	14	EX	.60			Oct	14	7,187.26*
Oct	15	EX	.60			Oct	15	7,187.86*
Oct	21					Oct	21	.00*

PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

No. 2750.

Federal Reserve Bank of Richmond, Appellant,

versus

Thos. A. Early, Receiver of the Farmers and Merchants National Bank of Lake City, Appellee.

Appeal from the District Court of the United States for the Eastern District of South Carolina, at Charleston.

May 14, 1928, the transcript of record is filed and the cause docketed.

Same day, the original notice of appeal, petition for appeal, order allowing appeal, appeal bond, and citation are certified up under Sec. 7 of Rule 14.

Same day the appearance of M. G. Wallace is entered for the appellant.

May 17, 1928, the appearance of R. E. Whiting is entered for the appellee.

May 28, 1928, twenty-five copies of the printed record are filed.

ORDER GRANTING LEAVE TO GEORGE P. BARSE AND F. G. AWALT TO FILE BRIEF ON BEHALF OF COMPTROLLER OF THE CURRENCY, AS AMICUS CURIAE.

Filed November 9, 1928.

(Style of Court and Title Omitted.)

UPON THE APPLICATION of George P. Barse, and for good cause shown,

LEAVE is hereby granted George P. Barse and F. G. Awalt to file a brief on behalf of the Comptroller of the Currency of the United States, as *amicus curiae* in the above case.

JOHN J. PARKER,
U. S. Circuit Judge Presiding.

November 9, 1928.

ARGUMENT OF CAUSE.

November 9, 1928, (October term, 1928), cause came on to be heard before Parker and Northcott, Circuit Judges, and Coleman, District Judge, and is argued by counsel and submitted.

OPINION.

Filed January 14, 1929.

UNITED STATES CIRCUIT COURT OF APPEALS

Fourth Circuit.

No. 2750.

Federal Reserve Bank of Richmond, Appellant,

versus

Thos. A. Early, Receiver of the Farmers and Merchants National Bank of Lake City, Appellee.

Appeal from the District Court of the United States for the Eastern District of South Carolina, at Charleston.

(Argued November 9, 1928. Decided January 14, 1929.)

Before PARKER and NORTHCOTT, Circuit Judges, and COLEMAN, District Judge.

MAXWELL G. WALLACE for Appellant, and R. E. WHITING for Appellee, and GEORGE P. BARSE, Attorney for Comptroller of the Currency of the United States (F. G. AWALT on brief) as *amicus curiae*.

PARKER, Circuit Judge:

This action was instituted in the court below by the Receiver of the Farmers and Merchants Bank of Lake City, South Carolina, to recover of the Federal Reserve Bank of Richmond, Virginia, a reserve deposit balance of $22,088.48 alleged to be owing by the Reserve Bank to the Merchants and Farmers Bank at the time of the failure of the latter, and also to recover the sum of $4,115.15, being the surrender value with accrued dividends of 78 shares of stock in the Reserve Bank owned by the Farmers and Merchants Bank at the time of its failure. The Reserve Bank admitted the deposit balance and the liability on the stock, but pleaded the right to apply the deposit balance on checks drawn on the Farmers and Merchants Bank which it had received for collection and under its rules had forwarded to the latter bank for the purpose of effecting collection. As to the amount due on the stock, it pleaded the right to apply this as a set off against the balance remaining due on the checks after applying the deposit balance. The facts were stipulated and a jury trial was duly waived. The trial judge held as a matter of law that the Reserve Bank was not entitled to apply the deposit balance or set off the stock liability as claimed, and gave judgment in favor of the Receiver for the full amount demanded. The Reserve Bank has appealed.

The checks which the Reserve Bank claims the right

to charge against the account of the failed bank or upon which it seeks to apply the balance of that account, are checks which were sent to it for collection. It was handling them as collection agent under its clearance and collection system, which it had established under the authority to act as a clearing house for its member banks. See Sec. 16 of Federal Reserve Act. This collection system, which was agreed to by the forwarding banks as well as by the banks upon which the checks were drawn, was characterized, so far as the checks here are concerned, by the following provisions: (1) The Reserve Bank was acting only as agent of the forwarding banks and assumed no liability except for its own negligence; (2) it was authorized to send the checks direct to the drawee bank for collection; (3) the amount of any check for which payment "in actually and finally collected funds" was not received by the Reserve Bank was authorized to be charged back to the forwarding bank, regardless of whether or not the check itself could be returned; and (4) the checks, unless promptly returned by the drawee bank, were to be charged to its account with the Reserve Bank at the expiration of a designated transit time, in this case three days, but the latter bank reserved the right to so charge them at any time when in any particular case it was deemed necessary to do so. This last provision, because of its importance to the questions here involved, we give in the exact language of the circular sent out by the Reserve Bank to its member banks, as follows:

"* * * the amount of any cash letter to a member bank is chargeable against available funds in the reserve account of such member at the expiration of such transit time, which date will be shown on each cash letter. The right is reserved, however, to charge a cash letter to the reserve account of a member bank at any time when in any particular case we deem it necessary to do so."

The balance of the insolvent bank which the Reserve Bank seeks to apply on the checks in controversy is a deposit balance in an account maintained in accordance with Section 19 of the Federal Reserve Act (12 U. S. C. A. 461-464). It was subject to be checked against or withdrawn by the member bank for the pur-

pose of meeting existing liabilities but under the regulations and subject to the penalties prescribed by the Federal Reserve Board, 12 U. S. C. A. 464. These regulations, however, fixed the reserve requirements and prescribed penalties for deficiencies in the reserve. Regulation D, Series of 1924. The stock liability, against which the Reserve Bank seeks to set off the balance due on the checks in controversy, arises out of the ownership of 78 shares of its stock by the insolvent bank. The law provides that upon the insolvency of a member bank such stock shall be cancelled and that cash paid thereon with interest from date of last dividend shall be first applied to all debts of the insolvent bank to the Reserve Bank, and the balance, if any, be paid to the receiver of the insolvent bank. 12 U. S. C. A. 288.

The case arose in the following manner: On Oct. 7, 1926, the Reserve Bank forwarded for collection to the insolvent bank checks drawn against the latter amounting to $14,900.62. On October 8th it forwarded checks amounting to $20,170.71. The insolvent bank received the first lot of checks on October 8th and the second on October 9th. It immediately acknowledged receipt of them in each case; and with the exception of a few small checks, which were dishonored and returned, it marked them paid and charged them on its books to the accounts of the various drawers. The bank closed its doors on October 9th, and a receiver was appointed for its affairs. At that time its reserve balance with the Reserve Bank was $22,088.48. The Reserve Bank did not attempt to charge any of the checks to the account of the failed bank until after notice had been received of its failure. On October 11th, however, it did charge the first lot of checks against it and on the following day the second lot. The latter, however, were later credited to the amount of the failed bank and charged against the customers of the Reserve Bank from whom they had been received for collection, although the checks themselves were not, of course, returned. The Reserve Bank contends that the first lot of checks should be paid in full from the balance in the account of the insolvent bank and that the balance remaining in its account should be applied *pro rata* on the second lot.

Upon these facts two questions arise: (1) whether the deposit balance in favor of the insolvent bank should be applied on the checks in question as contended by the Reserve Bank, and (2) whether the Reserve Bank can set off the balance due on the checks against its stock liability. We shall consider these separately, as they are governed by entirely different principles.

The first question, we think, should be answered in the affirmative. The checks were forwarded by the Reserve Bank to the insolvent bank under an agreement that they should be charged against its account at the expiration of three days, unless returned immediately. They were so sent because the owners for whom the Reserve Bank was acting as agent had consented to the arrangement. As a substitute for the right to have them presented through another bank and collected in cash, the owners had agreed that they be sent direct to the drawee under the agreement that if not promptly returned they be charged against the drawee's reserve balance. When, therefore, they were accepted by the drawee, the owners had the right to demand that they be charged against the drawee's account and that the balance in that account be applied by the Reserve Bank to their payment. The only question that can arise is when does this right of the owners of the checks become fixed so as to constitute it a charge upon the reserve balance. We think that it becomes so fixed when the drawee bank either unequivocally accepts the checks, as in this case, or by failing to return them promptly becomes chargeable with them under the terms of the agreement. When the checks are accepted by the drawee and charged to the accounts of the various drawers, the drawers and indorsers are released and all rights arising out of the checks themselves are extinguished. See *Federal Reserve Bank* v. *Malloy*, 264 U. S. 160; *Cleve* v. *Craven Chemical* Co. (C. C. A., 4), 18 Fed. (2d) 711, 52 A. L. R. 980. By accepting them, therefore, the drawee not only unequivocally manifests its acquiescence that they be charged to its reserve account, but it also releases the parties to whom the holders could look for payment in event of dishonor. The owners have consented that this be done only upon the agreement that the checks be charged to the reserve account of the drawee with the Reserve Bank. When it is

done and the drawers and indorsers are released, surely the right of the owners to have them so charged becomes fixed without necessity for further action.

And this right, we think, depends not upon the theory that the Reserve Bank is the owner of the checks or that it has the right to set off against the insolvent bank; but upon the fact that the contract of the parties has created an equitable charge upon the reserve account of the drawee bank and that such agreement operates as an equitable assignment of so much thereof as may be necessary to pay the checks when they are unequivocally accepted by the drawee. Under familiar principles of equity, such an equitable charge upon a fund arises in favor of a party when he becomes entitled to have his claim paid from that fund. See 3 *Pomeroy's Equity Jurisprudence* (4th Ed.) Secs. 1234, 1235 and 1280; *Fourth Street Bank* v. *Yardley*, 165 U. S. 634, 644; *Hurley* v. *Atchison, Topeka & Santa Fe Ry.*, 213 U. S. 126; *Walker* v. *Brown*, 165 U. S. 664; *Ketchum* v. *St. Louis*, 101 U. S. 306, 317; *Partin and Orendorff Implement Co.* v. *Moulden* (C. C. A., 5th), 228 Fed. 111, cert. denied 241 U. S. 669; *In re Hollins* (C. C. A., 2nd), 215 Fed. 41, L. R. A. 1915 B 438.

It is objected that the check is not to be charged to the account until the end of the transit time, which in this case is three days, and that in the meantime the account is subject to depletion by withdrawal and it is argued that it cannot be said to be subject to a lien or charge for the payment of the checks until they are actually charged against it. But we think it is the right which accrues to the owners of the checks to have them charged to the reserve account of the drawee when the latter has unequivocally accepted them, and not the mere entry in the books of the bank, which is the determinative factor. It is true that the reserve account of the drawee bank is subject to withdrawals and varies from time to time, and that, between the acceptance of the checks by the drawee and the charge entry by the Reserve Bank, the reserve account may have been depleted, as in this case, until it is less than the amount of the checks. This, however, cannot affect the right of the owners of the checks, which has already accrued, to have

them charged against the reserve account or to have the balance remaining in the account at the time of the charging applied so far as it will go toward their payment. The depletion of the account may affect the value of the right of the owners of the checks; we do not see how it can affect the existence of the right. It is analogous to the right of the holder of a check in those jurisdictions where the giving of a check is held to be an equitable assignment *pro tanto* of the funds on which it is drawn. In such case the withdrawal of the funds before the presentation of the check may defeat the right of the holder, but this does not impair the holder's right in the fund if it is not in fact withdrawn before the insolvency of the drawer. It is said that there can be no lien where the account is absolutely under the control of the drawee. But the account here was not under the control of the drawee. It was under the control of the Reserve Bank, which not only could have refused to honor checks and drafts drawn against it but also had the right at any time to charge against it the cash letters outstanding. Of course, until the checks are charged against the account, the right of the owners is not that of a lien upon the exact deposit balance which exists when they are accepted by the drawee, but the right to a charge against the fluctuating balance, the amount of which is made certain either by the expiration of the three days' transit period or by the earlier charging of the checks under the right reserved. *Id certum est quod certum reddi potest.* Although in this case the transit period had not ended at the time of the closing of the drawee bank, the right of the owners of the checks to have them charged against the reserve balance of the drawee had become fixed and irrevocable, and the failure of the bank fixed the amount of the reserve balance applicable to their payment.

In that the rights of the parties depend upon the transactions which occurred prior to the insolvency and not upon the book entries made in carrying them out, the case is not unlike the case of *McDonald, Receiver,* v. *Chemical National Bank,* 174 U. S. 610. In that case it appeared that it was the custom of the failed Capital National Bank to send to the Chemical Bank checks and other cash items which were credited to the account of

the Capital Bank which was frequently overdrawn. Shortly before a receiver was appointed for the Capital Bank it mailed a number of checks and other cash items to the Chemical Bank which were not received by the latter until after the receiver had taken charge and consequently were not credited prior to insolvency. It was held that notwithstanding this fact the Chemical Bank was entitled to retain the items and credit same on the account of the Capital Bank. The decision was based upon the fact that under the course of dealing between the parties the right of the Chemical Bank to the checks and other items arose when they were deposited in the mails, just as here we think that under the agreement of the parties the right of the owners of the checks to have same charged against the reserve account of the drawee bank arose and became fixed when that bank accepted them.

The Receiver argues that the right to charge the checks against the reserve account of the drawee is but the exercise of a power of attorney which is revoked by insolvency and that the situation of the Reserve Bank, therefore, is that of a bank against which a check is drawn, and which has no authority to pay the check after the insolvency of the drawer. It is argued that the Reserve Bank is in the same situation as a collecting bank which has accepted a check in payment of checks held for collection, where the drawer of the check fails before the check is collected. We do not think, however, that the cases are analogous. Under the Federal rule and under the uniform negotiable instruments act, when a check is accepted in payment, it is not an assignment of funds nor is it chargeable against particular funds. It is a mere order upon the drawee, which is revoked by the insolvency of the drawer. Here, however, we have a contract which provides that if the checks forwarded for collection are accepted by the drawer his liability for them shall be chargeable against and paid out of a particularly designated fund, his reserve account with the Federal Reserve Bank. It is not a question of an order upon a third party which such third party may honor or not as he sees fit (*Bank of The Republic* v. *Millard*, 10 Wall. 152); but of a binding agreement in which the holder of the fund is also the collecting agent. We think it falls clearly within the principle announced

by Mr. Justice White in *Fourth Street Bank* v. *Yardley*, 165 U. S. 634, 644, as follows:

"Whilst an equitable assignment or lien will not arise against a deposit account solely by reason of a check drawn against the same, yet the authorities establish that if in the transaction connected with the delivery of the check it was the understanding and agreement of the parties that an advance about to be made should be a charge on and be satisfied out of a specified fund, a court of equity will lend its aid to carry such agreement into effect as against the drawer of the check, mere volunteers, and parties charged with notice."

It is said that the case of *Equitable Trust Co.* v. *First Nat. Bank of Trinidad*, 48 Sup. Ct. 167, is authority against the position of the Reserve Bank, but we do not think so. In that case the Trinidad bank had drawn a draft on a bank in Italy and had arranged with New York bankers to provide the drawee with funds so that the draft could be honored, sending to the New York bankers funds for that purpose. The New York bankers had an account with the Italian bank, but no funds were designated out of which the draft of the Trinidad bank was to be paid. Upon the bankruptcy of the New York bankers, the Italian bank refused to pay the drafts which bankrupts had guaranteed, and their trustee in bankruptcy collected the balance to their credit in the Italian bank. The Bank of Trinidad claimed priority on this fund on the ground that it was charged with a trust in its favor. Its claim was denied for the reason that no fund was designated from which the draft was to be paid and no fund was assigned for the purpose of taking care of it, the ground of the decision being thus succinctly stated by Mr. Justice Holmes: "What the parties meant to establish and what the respondent got was the assurance of a credit abroad to the extent of its check as in the case of a letter of credit, not an attenuated property right in an account to which no special funds were attached and the particulars of which neither the respondent nor the purchaser of the check could know." In the case at bar, however, the checks were sent to the drawee upon the distinct and definite agreement that they were to be paid out of funds in the reserve account of the drawee by

charging them to that account. In the case cited, the New York bankers failed before the draft of the Bank of Trinidad was presented. In the case at bar the checks were accepted by the failed bank and the right to charge them against the reserve account of the drawee had become fixed before its failure. We see nothing in the Bank of Trinidad case which would justify the holding that under such circumstances the checks were not a charge upon the reserve account of the drawee.

With respect to the deposit balance, therefore, our conclusion is that this is not recoverable by the receiver but should be applied by the Reserve Bank upon the checks forwarded for collection. The same conclusion was reached in *Federal Reserve Bank* v. *First National Bank*, 277 Fed. 300, and in *Keyes, Receiver*, v. *Federal Reserve Bank*, an unreported decision of Judge Page Morris of the District of Minnesota. And see also *Storing* v. *First Nat. Bank* (C. C. A. 8th), 28 Fed. (2d) 587, and *Midland National Bank & Trust Co.* v. *First State Bank of Sioux Falls*, —— Minn. ——(Decided Nov. 30, 1928).

On the second question, we do not think that the Reserve Bank has the right to set off the balance due by the insolvent bank on the checks against its stock liability. The Reserve Bank was not the owner of these checks. It was merely an agent for collection; and although it credited them to the accounts of the forwarding banks, this was upon agreement that they might be charged back if not collected, and the second lot of checks has been charged back. The stock liability is a liability created by statute which provides that it "shall be first applied to all debts of the insolvent member bank to the Federal Reserve Bank, and the balance, if any, shall be paid to the receiver of the insolvent bank." 12 U. S. C. A. 288. It is perfectly clear that the liability of the insolvent member bank for these checks is a liability owing to the owners of the checks in which the Reserve Bank is not interested except as collection agent, and is not "a debt of the insolvent member bank to the Federal Reserve Bank" within the meaning of the statute.

Even in the absence of a statutory direction as to how the liability should be applied, a set off of checks held for collection against such a liability would not be allowed, for the reason that demands to be set off against

each other must be mutual, that is they must be due to and from the same parties and in the same capacity. 14 R. C. L. 656; 24 R. C. L. 858; *Morse on Banks and Banking* (6th Ed.), 334; *Bank of the Metropolis* v. *New England Bank*, 6 Howard 212; *Smith* v. *Bath L. & B. Ass'n*, —— Me. ——, 136 Atl. 284, 50 A. L. R. 526; *Yardley* v. *Clothier*, 51 Fed. 506.

Our conclusion, therefore, is that the District Judge erred as a matter of law in finding for plaintiff with respect to the first cause of action, which relates to the deposit account, but that his finding with respect to the second cause of action, which relates to the stock liability, is correct. The judgment rendered will be set aside, therefore, and a new trial will be awarded on the first cause of action.

Reversed in Part.

JUDGMENT.

Filed and Entered January 19, 1929.

UNITED STATES CIRCUIT COURT OF APPEALS,

FOURTH CIRCUIT.

No. 2750.

Federal Reserve Bank of Richmond, Appellant,

vs.

Thos. A. Early, Receiver of the Farmers and Merchants National Bank of Lake City, Appellee.

Appeal from the District Court of the United States for the Eastern District of South Carolina.

This Cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of South Carolina, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court, in this cause, be, and the same is hereby, set aside; that this case be, and the same is hereby, remanded to the District Court of the United States for the Eastern District of South Carolina, at Charleston, for further proceedings not inconsistent with the opinion of the Court filed herein; and that the costs in this Court be divided equally between the parties.

JOHN J. PARKER,
U. S. Circuit Judge.

January 19, 1929.

ORDER STAYING MANDATE.

Filed January 28, 1929.

(Style of Court and Title Omitted.)

Upon the Application of the Appellee, by R. E. Whiting, Esq., his counsel, and for good cause shown,

It Is Ordered that the mandate of this Court in the above case be, and the same is hereby, stayed pending the application of the Appellee in the Supreme Court of the United States for a writ of certiorari to this Court, unless otherwise ordered by this or the said Supreme Court, and provided said application is filed in the said Supreme Court within 45 days from this date.

JOHN J. PARKER,
U. S. Circuit Judge Presiding.

January 28, 1929.

PETITION OF APPELLEE FOR EXTENSION OF TIME WITHIN WHICH TO PRESENT PETITION FOR REHEARING AND FOR A STAY OF THE MANDATE.

Filed February 16, 1929.

(Style of court and Title omitted.)

The petition of Thomas A. Early, as Receiver of the Farmers and Merchants National Bank of Lake City, South Carolina, respectfully shows:

1. That he desires to file a petition for rehearing in the above cause.

2. The issue involved in this cause affects not only the rights of the insolvent bank, but also involves a ruling which will be determinative of the rights of all member banks of the Federal Reserve system; and therefore the office of the Comptroller of the Currency is especially interested in the pending cause.

3. The Comptroller of the Currency has requested that a draft of the petition for rehearing be presented to his office before the same is filed, in order that his office may be fully advised of the positions taken in support of such petition for rehearing, and that his viewpoint in this matter may be properly presented to the Court in such petition.

4. It will be necessary, in order to comply with the request of the Comptroller of the Currency, to procure an extension of time for the filing of the petition for rehearing.

Wherefore your petitioner respectfully prays that an order be made staying the mandate of the Court and granting an extension of fifteen days for the purpose of presenting a petition for rehearing herein.

R. E. WHITING,
Attorney for Thomas A. Early, as Receiver of the Farmers and Merchants National Bank of Lake City, South Carolina.

14th February, 1929.

ORDER EXTENDING TIME WITHIN WHICH APPELLEE MAY PRESENT PETITION FOR REHEARING AND STAYING OF MANDATE.

Filed February 16, 1929.

(Style of Court and Title Omitted.)

Upon the Application of the Appellee, by R. E. Whiting, Esq., his counsel, and for good cause shown,

It Is Ordered that the time required by the rules for the filing of a petition for rehearing in the above entitled cause be, and the same is hereby, extended as asked for and the said Appellee is given leave to present a petition for a rehearing herein on or before March 5, 1929.

And It Is Further Ordered that the mandate of this Court in the above entitled cause be, and the same is hereby, stayed pending the petition of the Appellee for a rehearing, provided the petition is presented on or before March 5, 1929.

EDMUND WADDILL, JR.,
Senior Circuit Judge.

February 16th, 1929.

PETITION OF APPELLEE FOR A REHEARING

Presented March 5, 1929.

(Style of Court and Title Omitted.)

The appellee, by his attorney, R. E. Whiting, respectfully petitions that the opinion in this case be reviewed, and a rehearing granted. And, as grounds of this petition, presents: The conclusions of the opinion rest upon premises which appear to this appellee to be clearly faulty and erroneous, and which are not sustained by an analysis of the record and its accompanying exhibits.

I.

In the opinion, at page 10, it is said:

"* * * the checks were sent to the drawee upon the distinct and definite agreement that they were to be paid out of funds in the reserve account of the drawee * * * and the right to charge them against the reserve account of the drawee had become fixed before its failure."

The agreement in this form is not conceded. If held to exist, it must be implied from regulations and other exhibits. These must be read in their entirety. The basis of the agreement under which the checks were deposited for collection, is found in Section IV (3), of Regulation "J":

"For all such checks as are received for deferred credit in accordance with such time schedule, deferred credit, subject to final payment, will be entered upon the books of the Federal Reserve Bank at full face value, but the proceeds will not be counted as reserve nor become available for withdrawal or other use by the sending bank until such time as may be specified in such time schedule, at which time credit will be transferred from the deferred account to the reserve account or clearing account subject to final payment, and will then be counted as reserve and become available for withdrawal or other use by the sending bank."

The significance of the expression, "*subject to final payment*", as used in the above connection, more clearly appears by reference to Section V (6):

"The amount of any check for which payment in actually and finally collected funds is not received shall be charged back to the forwarding bank, regardless of whether or not the check can be returned."

It is also to be noted that subsections (1) to (6), Section V, are designed specifically to prescribe the "terms and conditions" *imposed* upon "each member and non-member clearing bank which *sends* checks *to* any

Federal Reserve Bank for deposit or collection". In determining the effect that should be given these terms and conditions, and, also, the parties intended to be bound thereby, reference should be had to the first provision of the section, upon which the subsections depend. This is of such importance that we shall quote it in full:

"The Federal Reserve Board hereby authorizes the Federal Reserve Banks to handle such checks subject to the following terms and conditions; and each member and non-member clearing bank which *sends* checks *to* any Federal Reserve Bank for deposit or collection shall *by such action* be deemed (a) to authorize the Federal Reserve Banks to handle such checks subject to the following terms and conditions, (b) to warrant its own authority to give the Federal Reserve Banks such authority, and (c) to agree to indemnify any Federal Reserve Bank for any loss resulting from the failure of such sending bank to have such authority."

The right of the Federal Reserve Bank of Richmond to issue the check collection circular, of which a part only is quoted at page 3 of the opinion, is given by Section VI of Regulation "J":

"Each Federal Reserve Bank shall also promulgate rules and regulations not inconsistent with the terms of the law or of this regulation, governing the details of its check clearing and collection operations. Such rules and regulations shall be set forth by the Federal Reserve Banks in their letters of instruction to their member and non-member clearing banks *and shall be binding upon any member or non-member clearing bank which sends any check to such Federal Reserve Bank for collection* or to any other Federal Reserve Bank for the account of such Federal Reserve Bank for collection."

In sending out the check collection circular, an acknowledgment of receipt was required, reading as follows:

"The undersigned member bank hereby acknowledges receipt of Circular No. 143 of the Federal Re-

serve Bank of Richmond, regarding the 'Collection of Checks', effective July 1, 1926, setting forth the terms and conditions upon which cash items as specified in the circular will be received for collection *from* the undersigned member bank *by* the Federal Reserve Bank of Richmond or by another Federal Reserve Bank for its account, which circular supersedes Circular No. 131 of June 15, 1923."

The receipt in the above form was signed by the Lake City Bank on July 9, 1926. (See Exhibit 4.)

In sending the Lake City Bank the collection items in question, form letters of advice and acknowledgment were also used. We quote from the exhibits which were submitted to the Court in connection with the printed record the proposed terms of collection contained in the cash letter of October 7th, and the acknowledgement and acceptance of the checks under such proposed terms in letter of the Lake City Bank of the 8th, as follows:

(Exhibit #5.)

"No. 88443.

Dispatched Oct. 7, 1926.

Chargeable against available balance in RESERVE ACCOUNT.

Oct. 11, 1926.

We enclose for collection the checks listed below."
* * *

(Exhibit #6.)

"No. 88443.

"Your CASH LETTER has been received and collected this day. * * *

Oct. 7th, 1926.

$14,994.12.

Oct. 11, 1926."

(Stamped "PAID" Oct. 8th, 1926.)

(Exhibits 7 and 8 similarly show the dispatch and acknowledgment of the cash letter of October 8th, chargeable October 12th, containing checks amounting to $21,041.02; the stamp of the Lake City Bank showing acceptance of the cash letter and collection of the items Oct. 9th, 1926.)

As stated in the opinion, the bank, on acknowledging receipt of the checks, "marked them paid, and charged them to the accounts of the various drawers". But this method of collection amounted to a shifting of credits only. It did not furnish funds for remittance. The bank had to provide the funds. Of the three days agreed transit time, two days remained to the Lake City Bank to provide *available* funds at Richmond to meet payment of the items. During this two days period there was no trust relationship in the proceeds of the checks, because, as stated, no moneys were collected, and only a shifting of credits from the accounts of the drawers of the checks to a memorandum account, pending final remittance, occurred. Nor was there a lien on any funds in the bank's reserve account, which reserve account *continued* to be usable for *any* and *all* purposes.

It is the contention of the Receiver that the right of the owners of the checks to have the charge made "against available balances in the reserve account" did not arise until *after* the expiration of the agreed transit time, which was after the Lake City Bank had closed, and *after* the rights of the depositors and other creditors to a ratable distribution of the assets of the bank had become fixed by operation of law.

There is, however, as already indicated, the position taken by the Court that the terms of the check collection circular, as quoted at page 3 of the opinion, created a vested right in the owners of the items (i. e., the depositing banks which sent the items to the reserve bank) to have the amounts of said items charged against the reserve account of the collecting bank, and that such right, inasmuch as it vested as soon as collection was made, was not affected by the subsequent suspension of the bank.

Conceding, for argument, that the circular, dealing with the duties of banks to which cash items are sent, should be thereby deemed to impose terms and conditions

governing the acceptance of cash items by such banks, it should, nevertheless, be kept in mind that the collecting bank is given, by the very provisions of such circular, the right to keep its reserve account intact and make remittance by other means.

The substance of the requirement is merely that available funds be provided at Richmond to make payment for the collected items within the three days period; and, to all practical intents and purposes, the collecting bank could comply with the requirement by providing the funds in such manner as might be convenient to itself.

In order to apprehend this provision in its entirety we will quote it in full:

"OUR CASH LETTERS TO MEMBER BANKS.

"Checks received by us drawn on our member banks will be forwarded in cash letters direct to such banks and each member bank will be required *either* to remit therefor in immediately available funds *or* to provide funds available to us to meet such cash letters *within the agreed transit time* to and from the member bank. Therefore, the amount of any cash letter to a member bank is *chargeable* against *available* funds in the reserve account of such member *at the expiration of such transit time*, which date will be shown on each cash letter. The right is reserved, however, to charge a cash letter to the reserve account of a member bank at any time when in any particular case we deem it necessary to do so."

It will be noted that the amount of the collected items is *not immediately* chargeable to the reserve account, as the Court in its opinions seems to assume, but, on the contrary, it does not become chargeable until the *expiration* of the transit and during and within that transit time the collecting bank has its option of either remitting funds and thereby reserving its reserve account intact so far as said items are concerned, or of awaiting the *expiration* of the transit time and thereby permitting the authority to charge the reserve account to become effective. Clearly the right to charge the reserve account is intended to come into existence only

when the collecting bank has failed, during the transit period, to remit funds, and has, by such inaction, permitted the right to charge to become effective. Such right to charge the reserve account is an alternative authority given by the collecting bank to the Reserve Bank, to become effective in the event the collecting bank has not, at the expiration of the transit time, already made remittance.

It is true the Reserve Bank reserved in its check collection circular the right to charge a cash letter at any time against the account of a member bank, but it is a fact, shown by the record and not questioned, that the Reserve Bank did not see fit to exercise its right until after the suspension of the collecting bank, and, therefore, in accordance with the principles recognized by the Court, the authority to charge is revoked before it is exercised. As a further fact, the right reserved cannot be regarded as having been exercised at all because the charge against the reserve account was made, in the case of each cash letter, *after* the expiration of the conventional transit time.

II.

If the foregoing reasoning on our part is sound, it would seem to dispose of the additional position taken by the Court that there arose, immediately upon collection, not only a vested right in the depositing bank to have such collections charged against the reserve balance, but also that such vested right constituted an equitable lien upon the account. If it be established that no such vested right of charge against the reserve account existed, it necessarily follows that no such lien existed.

In further support of its position that the owners of the items forwarding them to the Reserve Bank had a vested right to have the amount of the checks considered as an equitable charge against the reserve account the moment the items were collected, the Court commented that when the items were collected they were thereby cancelled and the drawers and endorsers were released, and that such forwarding owners

"consented that this be done only upon the agreement that the checks be charged to the reserve account of

the drawee with the Reserve Bank. When it is done and the drawers and endorsers are released, surely the right of the owners to have them so charged becomes fixed without necessity for further action."

This implication cannot, we think, be drawn from the premise of Circular No. 143. The circular explicitly provides that the forwarding banks are to be bound by the various provisons of the circular and by Regulation "J" of the Federal Reserve Board, and portions of said Regulation "J" are then quoted in said circular. Regulation "J", as there quoted, provides that:

(a) The Reserve Bank may either present the checks for payment or send them direct to the bank on which drawn for collection, or may send them to an agent for collection;

(b) The Reserve Bank may accept either cash or bank drafts in payment of or in remittance for said items;

(c) The Reserve Bank will ordinarily forward the items direct to member banks, and that

"such banks will be required to remit or pay therefor at par in cash or bank draft acceptable to the collecting Federal Reserve Bank, or at the option of such Federal Reserve Bank to authorize such Federal Reserve Bank to charge their reserve accounts or clearing accounts."

The banks sending the checks to the Reserve Bank for collection are thus charged with knowledge of the fact that under Regulation "J" the Reserve Bank may collect *either* by cash or bank drafts *or* by charging the amount of the collection to the reserve account of the collecting bank; and they are further charged with notice of the provisions in the circular to the effect that the collecting bank has, "*within the agreed transit time*", the right *either* to remit, "*or* to *provide* funds available to us (the Reserve Bank) to meet such cash letters". Hence, it follows, clearly, that there is no basis for the position assumed by the Court that the owners of the

items, in forwarding them to the Reserve Bank, relied upon any lien upon the reserve account or any vested right to charge against said reserve account when the items should be collected; but, on the contrary, they were charged with notice of the fact that the collecting bank had the right to forward funds by way of remittance and to preserve its account intact, and that the right to charge did not become effective except as "against *available* funds in the reserve account of such members *at the expiration of such transit time*".

Also to be considered as having a vital bearing in this connection are the facts and circumstances:

(a) The duty as declared in Circular No. 143 to provide available funds in the reserve account is without security for its performance.

(b) There is no requirement that balances be carried for the purpose of meeting items in transit.

(c) Neither the amount of balances usually carried, nor the probable extent of withdrawals, nor the particulars of the balances at any given time, are known to the owners of items when they use the Federal Reserve Bank system for the purpose of collections.

(The entries in the reserve account of the Lake City Bank between September 15, 1926, and the closing date (Exhibit No. 9) are interesting and instructive in this connection. Attention is directed particularly to the condition of balances, withdrawals and deposits, shown on the books, between the dates of September 22nd and September 25th. The owners of checks contained in the cash letters sent from Richmond to the Lake City Bank on September 21st and 22nd, would have found on the 23rd only $2,880 as the amount of *available* funds in the reserve account. *Also, to the entries of October 8th and 9th*: The reserve balance of October 8th, when the cash letter of the 7th was accepted by the Lake City Bank, was $32,196. Charges greatly exceeding this balance (amounting in the aggregate to over $55,000) were made on the 8th and 9th against the reserve account. Necessarily, therefore, the balance of $22,085, appearing in the reserve account of the 11th, after the bank had

closed, was created by deposits made subsequent to the handling of the checks contained in the cash letter of the 7th.)

(d) Checks drawn on non-member and non-affiliated banks, which have neither reserve nor clearing accounts, are received for collection by the Reserve Banks and are similarly subject to handling by sending direct to the drawee bank. Consent that the checks be surrendered, and the drawers released, and the right arising out of the checks extinguished, cannot, in such cases, be attributed to the faith of reserve balances, but is based on nothing more than the mere contractual duty to remit by cash or bank draft—subject to the hazard of possible insolvency of the drawee bank before the remittance is completed by final collection.

(e) The Federal Reserve Act, while setting out clearly and specifically the provisions governing reserve balances and enumerating in detail the duties and powers of the Federal Reserve Board and the functions to be exercised by the Federal Reserve Bank, does not, however, by any specific provision, confer any power upon either the Federal Reserve Board or the ReserveBanks to appropriate the reserve balances carried by member banks, or to create an equitable charge against such balances, in the aid of the clearing house functions of the system.

The Act, therefore, cannot be deemed to impose any agreement upon the member bank to give a fixed and irrevocable right to charge its balances in aid of clearances; nor would it seem that the mere acceptance of the items could be regarded as constituting such agreement, because under the express provision of the Federal Reserve Act, as construed by the Supreme Court, the banks to which checks are sent for collection are compelled to remit at par, and the acceptance of such items could not be refused without appearing to violate the statute.

Again requesting the Court to keep in mind the unquestionable fact that the reserve account of the Lake City Bank could be used for any and all purposes of the bank during the two days period intervening be-

tween the acceptance of the checks and the expiration of the transit period, and that the amount of *available* balances at the *expiration* of the transit period is necessarily dependent on the extent of withdrawals and deposits occurring after the acceptance of the checks, we submit that the well established principles governing equitable liens clearly show that the banks owning the checks are not entitled to an equitable charge upon the funds carried in the reserve account.

In the *Interborough Consolidated Corporation* case, 238 Fed. 234, 32 A. L. R. 932, 947 (*Certiorari* denied 262 U. S. 752, 67 L. Ed. 1215), it is said:

"A particular fund is not charged unless it is bound for an obligation imposed."

The application of the same principle is found in *Woodhouse* v. *Crandall,* 197 Ill. 104, 58 L. R. A. 385, where it is said:

"This deposit was for a specific purpose, for the benefit and security of a third person, and it created a trust relation in his favor. The banking firm assumed the position of a trustee and the money deposited constituted a trust fund *which the bank was bound to keep intact for the purpose of the trust."*

So also in the *Butterworth-Judson* case, 69 Law Ed. 672, an equitable charge was held to be established by the deposit of money "in *special* accounts in banks *separate* from its other funds", to be drawn only for specific purposes. This equitable lien was said to be created by the agreements making the balances in the special accounts security, in that:

"The purpose and effect of the special accounts was * * * *to limit the use of the fund to the purposes specified,* and so to make it available as security. * * *"

Similarly, in the *Bank of Trinidad* case (cited and discussed at pages 9-10 this opinion), the sole question at issue was whether a *special* account had been estab-

lished and the use of the funds irrevocably *limited* to the purposes specified. Mr. Justice Stone considered that this had been done "by *specifically* designating and *setting apart*" enough of the bankrupt's account to meet the payment. The majority opinion written by Mr. Justice Holmes differed with this conclusion; holding that the transactions did not constitute the appropriation of a fund for a specific use, and, consequently, that they did not operate to establish—

"an attenuated property right in an account to which no *special* funds were attached, and the particulars of which neither the respondent nor the purchaser of the check could know."

Concerning the agreement of the bankrupt, "on the faith of which the petitioner sold its draft", Mr. Justice Stone said:

"It provided specifically the method of a payment; that the bankrupt should 'promptly', on notice of the draft, 'provide the drawee with funds sufficient for the payment of the draft abroad, by a transfer of credit or otherwise'."

The contention that the method thus provided for payment had given the holder of the draft equitable rights in the bankrupts' deposit is met and answered in the opinion of Mr. Justice Holmes by the succinct statement:

"Again, the terms offered by the bankrupts to their correspondents seem to us to promise the appropriation of a specified fund to the draft as little as they promise to apply the money received by them to that end. They are to provide the drawee banks with sufficient funds for the payment of the drafts by transfer of credit from our balance 'or otherwise'. They are to provide, that is, as convenient to themselves, for payment by the drawee banks, not to give them an earmarked *corpus* to be handed over."

May we not properly follow in this case the same

trend of thought voiced by Mr. Justice Holmes in the comments above quoted?

The terms upon which the cash items were sent to the Lake City Bank seem to promise the appropriation of a specified fund as little as the bank promised to apply the proceeds of the collection to that end.

The sole requirement of the Lake City Bank was to provide the Reserve Bank with funds sufficient for the payment of the checks by transfer of credit from available funds in the reserve accounts, or otherwise. It was to provide these funds *in such manner as might be convenient to itself* within the three days transit period —not to furnish upon the acceptance of the checks either "an earmarked *corpus* to be handed over", or "an attenuated property right in an account to which no special funds were attached".

III.

After the appeal had been argued and taken under advisement, the attention of the Court was called by appellant's attorney (in manner as provided by the rules of the Court) to the Storing and Midland National Bank cases, to which reference appears at page 11 of the opinion. The Court having deemed it proper to cite these cases as supporting authorities, their influence upon the opinion, as a factor of decision, may be fairly assumed. In this we think the Court failed to take into consideration the real character of the decisions and points of difference appearing therein, which, on a closer analysis, will be obvious.

Thus, in this opinion at page 11, it is pointed out that the Reserve Bank was not the owner of the checks but was merely the agent for collection, and that—

"It is perfectly clear that the liability of the insolvent member bank for these checks is a liability owing to the owners of the check in which the Reserve Bank is not interested except as collection agent, and is not 'a debt of the insolvent member bank to the Federal Reserve Bank.'."

In *Storing* v. *National Bank*, 28 Fed. (2nd) 587, it seems, however, to have been assumed (without any par-

ticular consideration of the point) that the items in question were owned by the forwarding bank in its own right, and that, as soon as the collections were made, the collecting bank became the debtor of the bank transmitting the items for collection. Upon the basis of this assumption the right of offset was held to exist. The premise governs the conclusion; and manifestly the conclusion has no application in the present case where the premise is the exact opposite.

In the Midland National Bank case (Minn.), the position was taken that the forwarding bank "had the legal title, so to speak, to the dishonored drafts". The same criticism as that made of the Storing case applies. The decision in the Midland case seems also to be substantially influenced, if not wholly controlled, by the viewpoint that the claim involved only the amount by which the assets of the insolvent bank "were enhanced through the collections made immediately prior to its suspension". This also presents an obvious point of difference from the present case, where the checks were all drawn on the insolvent bank and were collected by charging them to the accounts of depositors of that bank, resulting in a shifting of credits rather than in an augmentation of assets (see 13 Fed. 330).

See also discussion in original brief for appellee, at pages 29-33, analyzing the positions taken in *Federal Reserve Bank* v. *First Nat. Bank*, 277 Fed. 300, and *Kayes, Receiver*, v. *Federal Reserve Bank* (unreported decision of Judge Morris).

For the foregoing reasons, and particularly in view of the importance of this decision in its general effect upon banking conditions under the Federal reserve system, we respectfully submit that the Court should grant a rehearing in this cause, in order that the matters presented in this petition may be fully and thoroughly considered.

R. E. WHITING,
Attorney for Petitioner.

As counsel for the petitioner, Thos. A. Early, Receiver of the Farmers and Merchants National Bank of Lake City, South Ctrolina, I hereby certify that, in my

judgment, the foregoing petition for rehearing is well founded, and that it is not interposed for delay.

R. E. WHITING.

Columbia, S. C., March 4th, 1929.

ORDER DENYING REHEARING.

Filed and Entered April 9, 1929.

UNITED STATES CIRCUIT COURT OF APPEALS,

FOURTH CIRCUIT.

No. 2750.

Federal Reserve Bank of Richmond, Appellant,

vs.

Thos. A. Early, Receiver of the Farmers and Merchants National Bank of Lake City, Appellee.

Appeal from the District Court of the United States for the Eastern District of South Carolina, at Charleston. At Law.

This Court having at its January term, 1929, rendered its decision reversing in part the judgment of the said District Court appealed from in this case, and the appellee having on March 5, 1929, presented to the Court a petition for a rehearing of the said case, and the same having been carefully considered.

It Is Now Here Ordered by This Court that the rehearing asked for, be, and the same is hereby, denied

at the cost of the appellee. Let mandate issue after the expiration of five days from this date.

JOHN J. PARKER,
U. S. Circuit Judge.

April 9, 1929.

On another day, to-wit, May 6, 1929, the mandate of this Court in this case is issued and transmitted to the United States District Court at Charleston, South Carolina, in due form.

Same day, the original notice of appeal, petition for appeal, order allowing appeal, and bond are returned to the Clerk of the District Court at Charleston, South Carolina.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
Fourth Circuit, ss:

I, Claude M. Dean, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true copy of the record and proceedings in the therein entitled cause, made up in accordance with the request of counsel, as the same remains among the records and files of the said Circuit Court of Appeals.

IN TESTIMONY WHEREOF, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Asheville, North Carolina, this 3rd day of July, A. D., 1929.

CLAUDE M. DEAN,
Clerk, U. S. Circuit Court of Appeals, Fourth Circuit.

(Seal of Court)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 21, 1929

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

FILED
FEB 25 1930
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 226

THOMAS A. EARLY, RECEIVER OF THE FARMERS & MERCHANTS NATIONAL BANK OF LAKE CITY, PETITIONER,

vs.

FEDERAL RESERVE BANK OF RICHMOND, RESPONDENT.

STIPULATION SUPPLYING KEY TO CERTAIN ABBREVIATIONS APPEARING IN TRANSCRIPT OF RECORD.

R. E. WHITING,
Counsel for Petitioner.
M. G. WALLACE,
Counsel for Respondent.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 226

THOMAS A. EARLY, Receiver of the Farmers & Merchants National Bank of Lake City, Petitioner,

vs.

FEDERAL RESERVE BANK OF RICHMOND, Respondent.

STIPULATION SUPPLYING KEY TO CERTAIN ABBREVIATIONS APPEARING IN TRANSCRIPT OF RECORD.

Come now, counsel for petitioner, and counsel for respondent, in the above entitled cause, and, by leave of Court first had and obtained, stipulate that the following constitutes a key to the abbreviations of bank-

ing terms appearing on pages 64 and 65 of the transcript of record:

Abbreviation.	Meaning.	
	Debit Side.	Credit Side.
DS	Discounted notes charged to bank at maturity.	Notes discounted for bank.
RM	Checks sent to bank in cash letters.	Checks deposited with Reserve Bank by member bank.
CY	Currency sent to bank.	Currency received from bank.
CL	Note or draft collected by member bank, charged on advice of collection.	Maturing note or draft collected for member bank.
TR	Transfer of credit from bank on its order.	Transfer of credit to bank on order of transferer.
RT	Checks returned dishonored or unpaid.	Checks returned dishonored or unpaid.
ER	Error or reversal of previous entry.	Error or reversal of previous entry.
IN	Interest.	Interest.
EX	Exchange.	Exchange.

R. E. WHITING,
Counsel for Petitioner.
M. G. WALLACE,
Counsel for Respondent.